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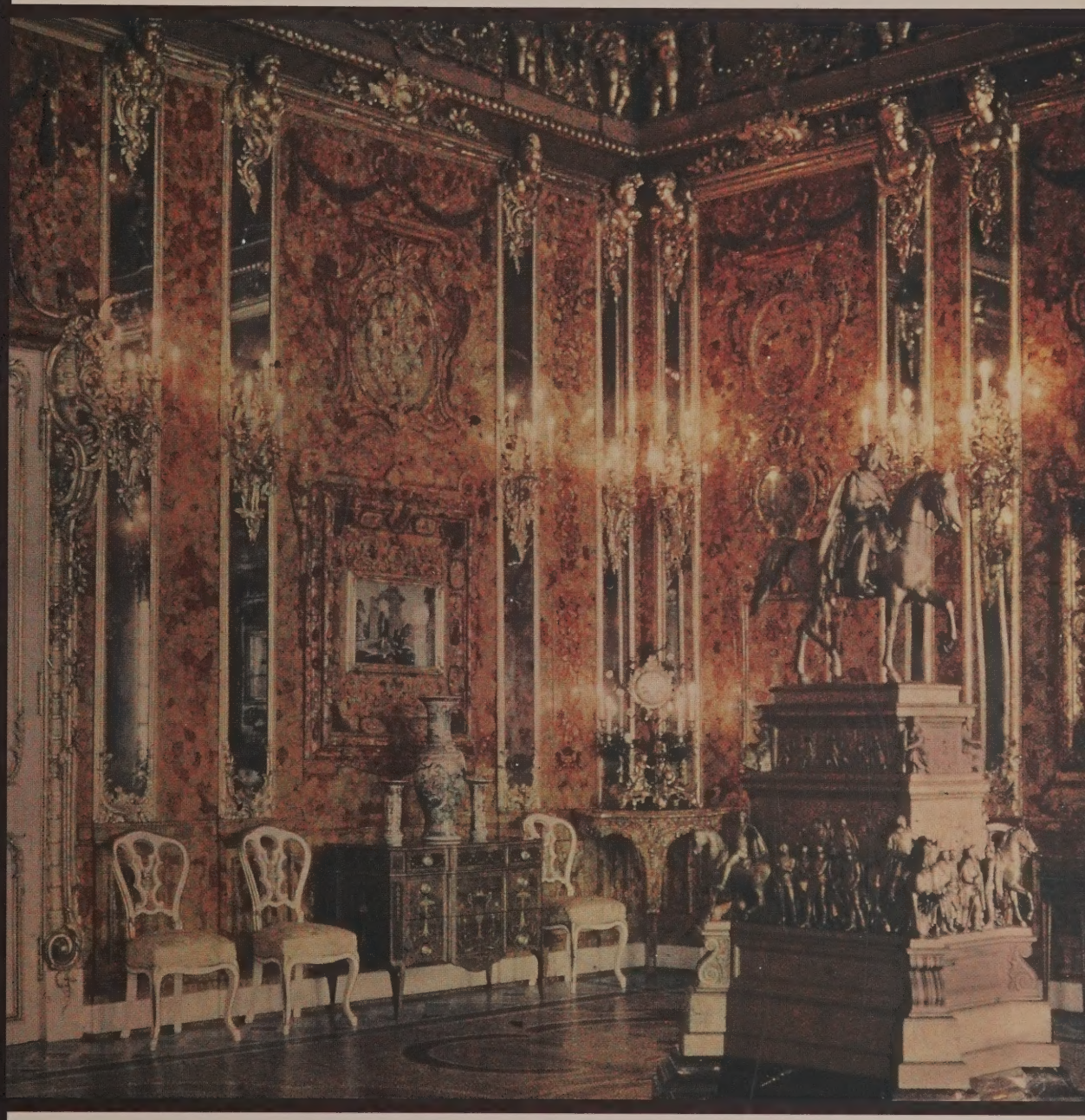

THE SEARCH FOR THE AMBER ROOM

Courbet or Not Courbet?

ROUNDUP: Recent Museum Litigation

INCORPORATING STOLEN ART ALERT

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IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

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COVER: Partial view of the original Amber Chamber, Summer Palace, Tsarskoe Zelo near St. Petersburg, 1938. © Bildarchiv Preußischer Kulturbesitz. See story on p. 38.

A RECIPE FOR ART FRAUD

Buy One Original — Make a Dupe — Sell Both Repeat At Least a Dozen Times

Government Indicts New York Art Dealer Ely Sakhai in Elaborate Scheme

FBI Seeks Art Community's Help

The scheme alleged in a federal indictment in June (US District Court, S.D.N.Y.) may be one of the most audacious art fraud and forgery schemes ever.

The plot involved not only more than two dozen works by well-known – mostly late 19th and 20th-century – artists, but the perpetrators got away with it for about 14 years, from 1990 to 2003!

"The indictment specifically names twelve works of art . . . But at least sixteen other works . . . are also believed to be involved."

At the center of the indictment is Ely Sakhai, the owner of the Art Collection, Inc., an art gallery/bric-a-brac store in Manhattan with another gallery in Great Neck, New York, and his associate Houshi Sandjaby, gallery manager.

The scheme, as described in the indictment, is mind-boggling. It is not unusual to sell forged works accompanied by authentic certificates of authenticity, which Sakhai is alleged to have done. IFAR, for example, reported in 1999 on a fake Renoir that circulated for years with an authentic certificate that Renoir expert, François Daulte, had been duped into providing (see the "Saga of the Forged Renoir" *IFAR Journal*, Vol. 2, no. 2). What staggers the imagination is the audacious number of fakes, their surprisingly high quality, and the brazen practice of selling not only multiple copies of the same work, but the original work as well.

Also astonishing is how such a scheme remained "under the radar" for so long. It helped that target buyers were in the Far East and away from the main art centers. Whether such a scheme could be launched today given the use that auction houses and galleries now make of the Internet for their sales is an open question.

The scheme was certainly lucrative. The two men are charged with one count of conspiracy to commit mail and wire fraud. In addition, Sakhai is charged with two counts of substantive wire fraud and six counts of mail fraud, in an elaborate scheme "to defraud the international art market through the sale of forged works of art," pocketing $7.8 million in the process. If convicted, Sakhai faces up to 20 years in prison for each of the eight counts of mail and wire fraud and an additional five years on the conspiracy count. He also faces a hefty fine of up to twice the profits from the crime. Arrested on March 9, he is out on bail pending trial. He has pleaded "not guilty."

The indictment specifically names twelve works of art – five by Chagall, and one each by Renoir, Modigliani, Klee, Monet, Gauguin, Moreau, and Rembrandt. Three of these works were added after the original complaint in March. But at least sixteen other works (see illustrations) – by Laurencin, Vlaminck, Valtat, Utrillo, Kisling, Rouault, and Chagall – are also believed by the FBI to be involved in the scheme. The agency is seeking information about them and their current owners, who are probably in Taiwan or Japan.

THE SCHEME

The scheme, as described by FBI investigators, was simple but effective:

- Buy an original, authentic artwork at public auction.
- Acquire certificates of authenticity or other certifying letters from experts.
- Hire skilled artists to make copies, down to the markings and labels.
- Make the fakes appear "older" with "special coating" and by constructing special frames.
- Then sell the copies (sometimes more than one copy of the same painting) together with the authenticating certificates.

No one will doubt the authenticity because: 1) the fake is well made, and 2) it comes replete with certificate. You focus on sought after artists, but choose only works in their mid price range, below the threshold that might trigger a buyer to do additional research or testing. You cover your bases still further by selling mainly to people in Japan and Taiwan – far enough away from the art centers of New York and Paris to make it difficult to contact the best experts.

Fig. 1. (far left) AUTHENTIC. Paul Gauguin, *Vase de Fleurs (Lilas)*, oil on canvas. Purchased by Ely Sakhai, Sotheby's December 1985. Sold at Sotheby's, May 2000.

Fig. 2. (right) FAKE. Paul Gauguin, *Vase de Fleurs (Lilas)*, oil on canvas. Sold Christie's, November 1997. Withdrawn from Christie's sale, May 2000.

The plan worked well – 14 years! – but Sakhai got tripped up by greed. The indictment says that the puffed up his profits by selling not only copies, but the original work as well, usually a few years after he sold the fake. With more than one version of a work in circulation, however, there was a chance that the original and copy might show up at the same time. And, that's exactly what happened.

SEEING DOUBLE

In 1985 Sakhai purchased Gauguin's *Vase de Fleurs (Lilas)*, (Fig. 1) at Sotheby's. Fifteen years later in May 2000 he consigned the work to Sotheby's for its May 11 Impressionist and Modern Art auction (Lot #125). The painting, an early Gauguin dating from 1885, has a most impressive provenance. It was once owned by Sir Lawrence Olivier (not mentioned in the Sotheby's catalogue) and passed from him to Sir Alexander Korda, the noted filmmaker, whose estate sold it in 1962.

The indictment accuses Sakhai of selling a forgery of the Gauguin to a collector in Tokyo. That painting was later consigned to Christie's, New York for a November 12, 1997 auction (Lot #211; illustrated) (Fig. 2). The Christie's catalogue listed the provenance of the "authentic" Gauguin. The fake sold for approximately $395,000 and, three years later, was consigned back to Christie's for its May 2000 Impressionist sale, the same month that Sakhai was selling *his* version of *Lilas* at Sotheby's.

When the two auction houses learned that both were offering what appeared to be the same Gauguin, they brought the paintings to the Wildenstein Institute in Paris, which was then working on a new Gauguin catalogue raisonné. Sylvie Crussard, one of the authors of the catalogue, determined that the Christie's work was not the original. It was withdrawn from the sale, before the catalogue was printed. Sakhai's Gauguin, however – the original – sold at Sotheby's for $310,000.

Curiously, four years later, in July 2004, Sakhai's "Art Collection" Website (http://216.219.140.235/theartco/index1.htm) was *still* advertising a work – in an ornate gilt frame – purporting to be the Gauguin *Lilas*. An undated description notes that the work "will be included in the forthcoming catalogue raisonné by the Foundation [sic] Wildenstein." Indeed, the catalogue appeared in 2003, and the entry for the *Lilas* mentions the existence of "an almost identical counterfeit" that was previously sold at Christie's in 1997.

"The fakes were good enough to fool auction specialists more than once, and several other art professionals."

CHAGALL

Marc Chagall figures prominently in Sakhai's alleged scheme. Five of the twelve works mentioned in the indictment are by him, and at least six other Chagalls figure in the FBI's continuing investigation. One Chagall, *La Nappe Mauve* (Fig. 3), was faked at least twice, and Sakhai allegedly sold both fakes with certificates of authenticity. One went to a buyer in Tokyo in 1993 for $514,000, and

Fig. 3. AUTHENTIC. Marc Chagall, *La Nappe Mauve,* oil on canvas. Painting was allegedly faked at least twice for buyers in Tokyo and Taiwan.

Fig. 4. FAKE. Marc Chagall, *Le Roi David dans le Paysage Vert*, oil on canvas. Sold at Christie's in 1998 and later destroyed by French authorities.

another, in 1998, to a buyer in Taiwan. That same year, Sakhai sold his own, authentic *Nappe Mauve* at Christie's London for £340,000. He had purchased it in 1990.

But he got tripped up by Chagall too. A forgery of Chagall's *Le Roi David dans le Paysage Vert* (Fig. 4) that he sold to a Taiwan art gallery was consigned by the gallery to Sotheby's in 1998 for a November 18th sale. In 2002 the fake was destroyed by French authorities after a court order was initiated by the Comité Chagall. But at the very moment the fake was in the hands of the French authorities, Sakhai sent the real *Le Roi David* to an art gallery in Paris, allegedly in compensation for nine works he had previously sent there, which were all determined to be fake. In turn, the nine works were compensation for having sold the dealer still another forged work, Monet's *Mont Kolsaas, Effet de Soleil,* in 2001 (Fig. 5).

Fig. 5. AUTHENTIC. Monet, *Le Mont Kolsaas, Effet de Soleil,* oil on canvas, 1895. Sakhai allegedly sold a forgery of this painting to a Paris dealer in 2001 for $650,000.

WHO PAINTED THE WORKS?

The fakes were good enough to fool auction specialists more than once and several other art professionals. Sylvie Crussard, co-author of the Gauguin catalogue raisonné, declared the forged Gauguin *Vase de Fleurs* (Lilas) one of the best fakes she had ever seen. Who painted the works? The indictment doesn't say. But at least two painters, identified as "Artist 1" and "Artist 2," must be known to authorities, since they are mentioned specifically in the June 15th indictment and not in the criminal complaint in March. Specifics of their working relationship with Sakhai and Sandjaby are mentioned in the indictment. They are said, for example, to have copied both from originals and photographs. It's implied that there were other artists as well. More will undoubtedly come out in the trial.

WHAT HAPPENS NOW?

The case is in the 'discovery' phase and will eventually go to trial. As IFAR goes to press, a trial date has not been set. Meanwhile, the FBI is still seeking information – including current ownership information – concerning at least sixteen other works that were not mentioned in the indictment. We are illustrating several below as a public service. Anyone having such information should contact the Brooklyn/Queens office of the FBI at the following number: (718) 286-7100. For images of all the works, visit: www.fbi.gov/hq/cid/arttheft/frauds030904.htm.

Mr. Sakhai, as noted, has posted bail and is not being held. The "Art Collection" remains open for business, although the Manhattan location – a cluttered storefront on Broadway, two blocks south of Union Square, on a street filled with small antique and furniture stores – will soon be closing. Its contents will be moved to the Great Neck gallery.

S.F.

THE FBI WANTS YOUR HELP

IF YOU HAVE INFORMATION ABOUT THESE WORKS

CALL: 718.286.7100

MARIE LAURENCIN, *Jeune Fille à la Mandoline* (also described as *Guitare*), oil on canvas, signed, 13 5/8" x 10 5/8".

MAURICE UTRILLO, *Eglise de Champagne*, oil on canvas, signed, 18.1" x 21.9".

MAURICE DE VLAMINCK, *Bouquet de fleurs dans un vase*, oil on canvas, 21.7" x 18.1".

MOISE KISLING, *Nude*, oil on canvas, 25.6" x 19.7".

MARC CHAGALL, *Descente de croix*, ink and gouache w/wash, 19.4" x 12.9".

GEORGES ROUAULT, *Port Scene* (also known as *Paysage Nègre* or *Paysage Africain*), signed, 10 1/2" x 16".

LIZ TAYLOR SEEKS COURT'S AID IN HOLOCAUST CLAIM

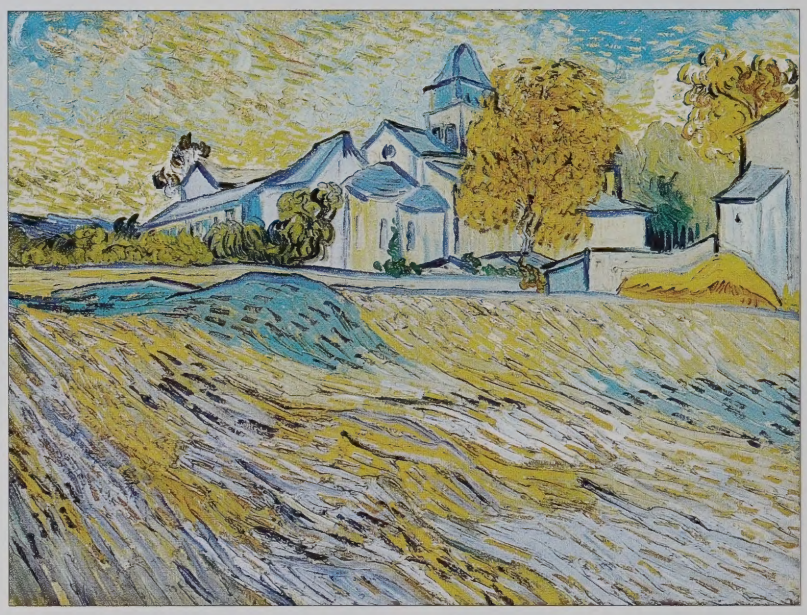
Preemptive Strike by Movie Star to Keep Van Gogh Painting

Actress Elizabeth Taylor filed a complaint in May (amended July 16) in a Los Angeles district court seeking the court's declaration that she is the rightful owner of a van Gogh painting to which Holocaust heirs are claiming title. The heirs have until mid-October to respond.

The 1889 painting entitled *View of the Asylum and Chapel at Saint Rémy* (F803)[1] once belonged to Margerete Mauthner, a German Jew who fled Berlin for South Africa in 1939.[2] Mauthner's Canadian and South African heirs now claim ownership. They first approached Taylor's representatives in 2001. Taylor's preemptive action was precipitated by the threat of suit against her that she says has cast a cloud over the painting rendering it unsaleable.

"The painting has been publicly exhibited with Ms. Taylor's name on many occasions..."

The actress' claim is based on substantive grounds, that there is no evidence that the work was ever confiscated by the Nazis nor that its transfer was coerced while the Nazis were in power. She also makes a procedural claim that the statute of limitations in both California and England expired long ago. The California statute is three years from when the claimant could have discovered the current owner, and the English statute in effect when Taylor purchased the work in 1963, according to the amended complaint, was six years.



Vincent van Gogh,. *View of the Asylum and Chapel at Saint Rémy*, 1889. Oil on canvas, 17½" x 23¾". Coll. Elizabeth Taylor.

Finally, she makes an equity claim under the doctrine of laches alleging that the heirs' decades-long delay in asserting ownership would cause her unnecessary prejudice if permitted to proceed because of the loss of evidence and the deaths of persons with relevant knowledge.

Taylor, whose father, an art dealer, acquired the painting for her for £92,000 at a widely publicized 1963 Sotheby's London auction (while she and Richard Burton waited anxiously in a Paris hotel), asserts that reasonable diligence would have revealed her ownership. In addition to post-sale news stories, the painting has been publicly exhibited with Ms. Taylor's name on many occasions including at the blockbuster exhibition "Van Gogh in Saint Rémy and Auvers" held at the Metropolitan Museum of Art in New York in 1986-87, and the showrooms of Christie's in Paris, New York, Tokyo, and London in 1990 in conjunction with a highly publicized but unsuccessful attempt to sell the work. The estimated selling price was £8 to 10 million.

Taylor's lawyers argue that her fame and the painting's public display have made discovery of the painting's whereabouts straightforward since 1963. They also argue that there is no merit to the claim and that the heirs

[1] Formerly known as *View of Church of Labbeville near Auvers.*

[2] Another account states that Mauthner fled for South America in 1938. See *Fluchtgut, Raubgut: der Transfer von Kulturgütern in und über die Schweiz 1933-1945 und die Frage der Restitution*, Esther Tisa Francini, *et al.* p. 94 n. 197 (Zürich, 2001).

have not presented any specific information about how or when Mauthner lost possession of the painting. They note that the Mauthner family sought restitution from the German government for the forced sale of property in the 1950s, but that they made no claim for the painting.

A press release issued by the Washington, D.C. based attorneys representing the Mauthner heirs, however, states that Taylor's claim misunderstands the circumstances of property transfer in 1930s Germany and that many owners were forced into selling possessions.

While much of the painting's ownership history is known, there are gaps and inconsistencies in the published provenance concerning the pre-war years, as is frequently the case in WWII-related claims. The painting's provenance, as listed in the 1990 Christie's sale catalogue, for example, shows that Mauthner purchased the painting from Paul Cassirer in 1907, then Marcel Goldschmidt owned the work (unspecified date), and subsequently, Alfred Wolf (also unspecified date). The painting was exhibited in 1928 in the Cassirer Galerie, Berlin. Taylor's amended complaint states that Wolf acquired the painting in the 1920s, fled to Switzerland by 1933, and was in Argentina in 1939. He exhibited the work publicly in Buenos Aires in 1949.

The standard catalogue raisonné on van Gogh was written by J.-B. de la Faille. The heirs' press release showed some reliance upon two of the editions of the de la Faille catalogues to show that Mauthner owned the painting during the 1930s. The 1928 and 1939 editions (completed at unknown dates) both list her as the current owner. Neither edition, nor the 1970 edition, lists Marcel Goldschmidt as an owner at any time, as both the Christie's 1990 and Sotheby's 1963 catalogues do.

> "...there are gaps in the published provenance concerning the pre-war years . . ."

Taylor's complaint points to 1933 correspondence between the Swiss collector Oskar Reinhart and the Cassirer Gallery in Berlin to bolster their assertion that by the end of 1933, Mauthner, who owned at least seven van Goghs, no longer owned any works by the artist. Reinhart had bought a van Gogh drawing, *A Garden* (F1455), from Mauthner in 1926. In late 1933 he bought another drawing referred to in the complaint as *View of the Sea at St. Maires* [sic] but titled in the 1970 catalogue raisonné: *View on Saintes-Marie with Church and Ramparts* (F 1439) . Negotiations surrounding the 1933 sale described the difficulties Mauthner had in parting with the "last and best piece of her van Gogh collection," which she was selling to fund her nephew's emigration.[3] Taylor argues that this shows that the painting in dispute had already been sold by 1933. But, as Reinhart only bought van Gogh *drawings* from Mauthner, it is not clear whether the last "piece" referred to all Mauthner's van Goghs or just her drawings.

Given the sketchiness of catalogue provenance entries and the uncertainty as to when the information was gathered, it may be difficult for either side to rely too strongly on any one publication. For example, the 1939 edition of the de la Faille catalogue lists Mauthner as owner of van Gogh's *The Rocks* (F466), while the 1970 edition of the catalogue shows that by 1938 the painting was in New York and had passed through two owners after Mauthner.

Should the case go to trial, the question of when and under what circumstances the painting left Mauthner's possession will be at issue. A 2002 California law extending the statute of limitations to 2010 for Holocaust-related art claims brought against museums or galleries does not apply since Ms. Taylor is an individual. The statute, however, defines the Holocaust era broadly as 1929 to 1945 instead of the more generally used date of 1933, when the Nazis came to power. It is unclear whether that will have any effect on this case.

S.F. and Matthew Batters,
Law Intern, IFAR

[3] Mauthner asked 12,500 Swiss Francs for the work. Reinhart apparently paid 800 Marks. Depending on whether the payment was in Reichmarks or Registermarks (purportedly unclear from the sales records), Francini *et al.* suggest that the sale might have been "forced." Ibid, p. 96.

CHRISTIE'S TO APPEAL DECISION IN THOMSON URNS CASE

Court Said Auction House Owed "Special Client" a Duty to Reveal Uncertainties

The international auction house, Christie's, intends to appeal a controversial judgment with potentially far-reaching implications for the auction trade that was handed down in May by the High Court in London. The decision concerned Christie's obligations to a client with whom it had established a "special relationship." The client, Taylor Thomson, is the daughter of media mogul Lord Thomson of Fleet. In December 1994, Thomson purchased a pair of gilded porphyry urns, known as the "Houghton Urns," said to be eighteenth century Louis XV, at Christie's London for 1.97 million British Pounds (approximately $3.1 million). Questions later arose as to whether the urns were in fact Louis XV. Ms. Thomson brought suit. The court decided that even though the auction house believed the urns were Louis XV and exhaustive tests during trial could not prove otherwise, Christie's owed a duty to Thomson to disclose the difficulties in distinguishing eighteenth century Louis XV works from nineteenth century Second Empire revival works, a difference with significant marketplace implications.

Pair of porphyry and gilt-handled urns sold at Christie's, London December 1994 and now the subject of a major lawsuit.

If Christie's appeal is unsuccessful, there will be another hearing to assess damages owed Thomson. At trial, Judge Raymond Jack determined that there was a 70 percent likelihood that the urns were eighteenth and not nineteenth century. Calculating damages will require experts to determine a value for the urns that reflects that uncertainty. In addition, English law requires that the loser pay the winner's court costs. An interim ruling on costs, in June, ordered Christie's to pay one third of Thomson's costs, a fraction reflecting her partial success in the various issues addressed at trial. The award is thought to be around £200,000.

> "Thomson tried unsuccessfully to get recourse from Christie's, which held steadfast to its opinion that the urns were eighteenth century . . ."

The porphyry urns, consigned to Christie's by the Marquess of Chomondeley along with other articles from his Houghton Hall estate, were listed in the catalogue as "A Pair of Louis XV porphyry and gilt-bronze two handled vases." Their estimated sale price was £400,000 to 600,000. At auction, a bidding war between Thomson – who was bidding by phone through her client adviser – and Ann Getty brought the price to £1.97 million.

Lacking the appropriate space to display the urns, Thomson kept them in storage at Christie's after the sale. They were still there when, four years later, in 1998, she heard a rumor from a French dealer that they might have been made in the Second Empire

(1840-70) [*sic*] or later, as opposed to the 1764-74 date stated by Christie's. Eighteenth century Neoclassical designs were copied in large numbers during the Second Empire, making accurate dating of such objects difficult, but creating widely differing market valuations. An urn similar to that sold at Christie's, if nineteenth century, would be worth only about £20,000 to 30,000.

Thomson tried unsuccessfully to get recourse from Christie's, which held steadfast to its opinion that the urns were eighteenth century despite the fact that metallurgical tests – later discredited – which Christie's conducted in 1998 when Thomson raised concerns, initially showed otherwise. Christie's withheld those negative results from Thomson for over a year, for which they were later faulted by the judge. Unable to rescind the sale and, reportedly angered and frustrated by Christie's attitude, Thomson filed suit in 2001 against both Christie's and Lord Chomondeley.

DATING AND CATALOGUING

A Chomondeley family photograph from 1921 is the earliest known provenance of the urns, which Chomondeley's grandmother purchased in France. Faced with the absence of provenance, the judge (there was no jury) heard in-depth testimony from numerous experts on both sides regarding the style, techniques, and materials of the urns in an effort to date them accurately. His lengthy opinion laid out the disagreements over such issues as the figurative style of the lions and the "finish" of the porphyry, and to what degree they betrayed evidence of nineteenth versus eighteenth century manufacture. The experts also presented data from metallurgic tests on the urns. But the judge found the test results inconclusive given the small sample base. The analysis was hampered further by a decision of the Getty Museum, which owns a very similar pair of urns that it dates to between 1765 and 1770, not to allow its urns to be tested for comparison during the legal proceeding. Its research and the expertise of its curator, however, had been enlisted by the Christie's specialists when they compiled the catalogue for the 1994 auction.

"Christie's' unqualified dating of the [urns] to the eighteenth century was reasonable and within the auction house's right as 'experts' "

Tests of the ornamental gilding on the urns showed evidence of nineteenth century manufacture. What was not certain, however, was whether the electrolytic gilding represented later "re-gilding," as some experts believed and the judge thought reasonable, or was original to the objects. But the judge decided that the date at which the porphyry had been worked from an original ancient Roman column, and not the gilding, was key to the overall date of manufacture. This, he determined from the expert testimony, could be pinpointed to around 1760 to 1765. He concluded, therefore, that the urns were eighteenth century to a 70 per cent certainty, but that Christie's' unqualified dating of them to the eighteenth century was reasonable and within the auction house's right as "experts." Thomson later sought, but was not granted, leave to appeal the judge's decision on the urns' dating.

Despite a favorable ruling for Christie's on the dating, the judge determined that the catalogue entry for the urns fell below the expected standard and that Christie's had "firmed-up" the descriptions. For example, the catalogue asserted that the urns were made in France. Earlier drafts of the description were more equivocal and had included the possibility that they were made in Italy at the court of Parma, although given the ties between the royal courts in Parma and Paris, such a qualification was unlikely to have mattered at the auction. Similarly, Christie's catalogue description was inaccurate in suggesting that the designs created by Ennemond-Alexandre Petitot for the Duke of Parma, upon which the urns were modeled, were specifically drawn for the Houghton Urns.

A condition report prepared by Christie's experts, unseen by the buying public and by Ms. Thomson, although it was available to her and to her advisers at Christie's, was also faulted for containing inaccuracies.

THE "SPECIAL CLIENT" RELATIONSHIP

The "firming up" of the catalogue descriptions and the condition reports were not, in themselves, sufficient to make Christie's guilty of negligence. The judge did not base his ruling on a general duty owed to buyers who rely on catalogue descriptions. Instead, he held Christie's to a higher standard of care by virtue of its special relationship with Thomson.

What was that relationship? Thomson had been a Christie's "client" since 1990 and was afforded special treatment, including an adviser to help her in various ways. In 1994, Thompson was elevated to "special client" status, though it appears that no formal notice communicated this status change to her. Although it is difficult to ascertain exactly what was meant by the term "special client," the New York special client program, bolstered in 1994 with the arrival of Patrick Cooney (formerly of Citibank Art Advisory Service), aimed to provide private collectors with professional advice. A February 1994 internal memo underlined Christie's desire to:

> "mov[e] into the gap left by the relative weakness of many top dealers of becoming the trusted art advisers of the client (rather than just an auctioneer)."

Given her new "special client" status, Thomson was assigned Patrick Cooney as a second adviser. The "special client" designation allowed her private viewings after hours, consultations with specialists, the option of having someone bid for her, and enhanced personal service from her advisers.

Thomson indicated to the court that she wholly relied on the auction house for expert opinion. She had no additional professional art adviser and asserted that Christie's was aware of that. Nor did she have expertise in the decorative arts. She was, moreover, aided in her bidding by Mr. Cooney.

"The judge accepted Thomson's written claim . . . that, had she been told of the difficulty of distinguishing between Louis XV and Second Empire objects, she would not have bid on the urns."

In 1994, the year she purchased the urns, Thomson made it known to her advisers that she was seeking pieces of museum quality and was looking for her first big purchase. At no point during pre-sale viewings or discussions of the urns, however, did her advisers indicate that there was anything other than certainty that the urns were what they were described to be. Indeed, there was no evidence at trial that her advisers or anyone at Christie's believed the urns *were* anything other than they described them to be. Nonetheless, the judge accepted Thomson's written claim – she did not take the stand during the trial – that, had she been told of the difficulty of distinguishing between Louis XV and Second Empire objects, she would not have bid on the urns.

Because of Thomson's special relationship with Christie's and her reliance on them, the judge determined that the auction house had not met its duty of care to her. If Christie's loses on appeal, the repercussions are unclear. It is not much of a leap to imagine that auction houses, if they aren't already, will become far more frank with their clients about the histories and attributions of objects they sell. Another victim will surely be the Client Advisory Services, which in Christie's case, has already been redefined. The terminology "special client" has not been used at Christie's since the late 1990s. At the time of the Houghton sale, Client Advisory Services was described as providing "professional advice for the private collector." In 1998, around the time that tension with Thomson arose, the purpose of the Service was described as "auction assistance." That description was later refined to: "auction assistance for private collectors."

S.F. and M.B.

SUPREME COURT RULING IN KLIMT CASE

Altmann Suit Allowed to Proceed

In a closely-watched decision with implications for other World War II-related lawsuits, the Supreme Court ruled in June that a California woman's suit against the government of Austria could proceed in the United States. As previously reported in *IFAR Journal* (see Vol. 4, no. 4; Vol. 5, nos. 1-3; Vol. 6, nos. 1&2), Maria Altmann, an elderly citizen of California, is suing the government of Austria and the Austrian National Gallery in Vienna to reclaim six paintings by Gustav Klimt that once belonged to her uncle and were confiscated by the Nazis.

The 6-3 Supreme Court decision was decided narrowly on the question of whether Altmann's claim was barred by the Foreign Sovereign Immunity Act (FSIA). The FSIA, enacted in 1976, grants immunity to foreign states from lawsuits in the United States, but it allows certain exceptions, including the so-called "expropriation exemption." Two lower courts in California ruled that the exemption applied in Altmann's case, and Austria turned to the Supreme Court. Austria had argued that its alleged activities in the Altmann case pre-dated the FSIA and the State Department's 1952 adoption of a restrictive policy on immunity that the FSIA later codified. As a result, it claimed that any exceptions that might apply from the 1976 legislation could not be applied retroactively. But the Court found "clear evidence that Congress intended" the FSIA to apply retroactively and that the law applies to activities "that occurred prior to 1976, and for that matter, prior to 1952. . ."

The Court emphasized the narrowness of its holding. It ruled only on the issue of retroactivity. It noted that Austria had other legal options available to it and could, for example, raise the "Act of State" doctrine. "Deference" would also be given to the U.S. government, which had filed a brief on behalf of Austria arguing that claims against a foreign country were best addressed diplomatically and not in the courts.

In a dissenting opinion, Justice Anthony Kennedy wrote that the decision "injects great uncertainty into our relations with foreign countries."

The justices did not rule on the merits of Altmann's case, which will now be decided in district court in California.

— S.F. and M.B.

ANTIQUITIES DEALER HICHAM ABOUTAAM RECEIVES PROBATION & FINE FOR CUSTOMS VIOLATION

Hicham Aboutaam, a prominent antiquities dealer with operations in New York and Geneva, Switzerland, was sentenced in U.S. federal court on July 20 to one year probation and a $5,000 fine for falsifying a commercial customs declaration in order to import an antiquity from Iran to sell to a client. Goods from Iran are prohibited from entering the United States.

In February 2000, Mr. Aboutaam falsely stated on the declaration that the antiquity, a c.700 B.C. silver rhyton (ceremonial drinking cup) in the shape of a griffin with outstretched wings and known as the "Silver Griffin," came from Syria. In fact, it is said to have come from an archaeological area in Northwest Iran, near the Iraq border, known as the "Western Cave." Between 1989 and 1992, many objects from the Western Cave were looted and have subsequently been smuggled out of the country. Aboutaam was arrested on federal charges in December 2003. In June, he pleaded guilty and apologized to the court. Sentencing guidelines for the misdemeanor charge carried a maximum six months in prison and up to $5,000 fine.

(continued on next page)

The collector who purchased the rhyton was Paula Cussi, a trustee of the Metropolitan Museum of Art in New York. Ms. Cussi first discussed the purchase with Aboutaam in 1999 in the Geneva headquarters of Phoenix Ancient Art, which he co-owns with his brother, Ali, and was founded by their father, now deceased. Ms. Cussi expressed interest in the Silver Griffin, and Aboutaam assured her that it was authentic and of Iranian origin. He subsequently hand-carried it on a flight from Switzerland to the U.S. Following metallurgy tests that confirmed its Iranian origin and authenticity, he sold the object to her in June 2002 for approximately $950,000. Ms. Cussi was not charged in the case. The rhyton is in the custody of the Department of Homeland Security, and no decision has yet been made regarding its final disposition.

This is not the first antiquities case involving falsified commercial customs documents. In 1998, in a highly publicized civil forfeiture suit now known as the "Steinhardt case" (see *IFAR Journal,* Vol. 2, no. 3), an ancient gold phiale (libation bowl) belonging to New York collector Michael Steinhardt was seized by U.S. Customs. It was ultimately returned to Italy, which had claimed ownership under its patrimony laws. The dealer who imported the phiale was found to have materially falsified customs documents by stating its origin as Switzerland, when it was Italy, and by deflating the object's value.

The Aboutaam brothers have been much in the news of late. In April of this year, they returned two antique limestone monuments (stele) to Egypt after the *New York Times* published a major article tracking the route of the stele illegally out of Egypt and into the hands of Ali and Hicham's father in 1997 and then beyond on the antiquities market. In June 2004, Phoenix Ancient Art received favorable publicity when it sold an ancient bronze sculpture of Apollo Sauroktonos attributed to Praxiteles to the Cleveland Museum of Art.

S.F. and M.B.

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WHO OWNS VUILLARD RESEARCH?

Lawsuits Filed in France and U.S. Claim Plagiarism and Copyright Infringement

National Gallery Files Motion to Dismiss

Defendant Guy Cogeval Denounces Allegations

A husband and wife team of art historians has filed one lawsuit in France and two in the U.S. seeking recognition of their scholarship on French painter Édouard Vuillard (1868-1940). The targets of the suits are the authors and publishers of the recent and highly-regarded Vuillard catalogue raisonné produced under the auspices of the Wildenstein Institute in Paris, and the authors and co-publishers of the catalogue accompanying the 2003 Vuillard retrospective at the National Gallery of Art in Washington and the Museum of Fine Arts in Montreal. At issue are questions germane to many scholars, including: who owns research conducted while under contract, although in this case, the very scope of that contract is in dispute; and when is research sufficiently original as to be copyrightable.

"At issue are questions germane to many scholars, including: who owns research conducted while under contract . . . and when is research sufficiently original as to be copyrightable?"

The plaintiffs, Annette Leduc Beaulieu and Brooks Beaulieu, Americans residing in Paris, spent years researching Vuillard's life and work, resulting in an unpublished manuscript *Reconsidering Vuillard*, written between 1992 and 1996. They accuse the defendants of plagiarizing this work and contend that their scholarly reputation has been irreparably damaged and that they have been deprived of the official recognition their "unprecedented contributions to the academic literature regarding Vuillard" merit.

The charge is categorically denied by Guy Cogeval, Director of the Montreal Museum of Fine Arts, chief curator of the Vuillard retrospective, and co-author of both the catalogue raisonné and exhibition catalogue. Cogeval told IFAR that his "way of looking at Vuillard, at his Symbolist temperament, [and] the way he manipulated those about him, . . . are the angles, the opinions, that constitute the essence of [his] book on Vuillard, and it would be hard to find even a hint of them in the Leduc-Beaulieu manuscript."

The suits are the product of Ms. Beaulieu's complex relationship with the National Gallery (NGA) and the couple's long-standing feud with Antoine Salomon, Vuillard's grandnephew and heir. In 1990, the NGA hired Beaulieu to research material at the Salomon archive for a prospective Vuillard exhibition. During this period, Salomon persuaded the couple to collaborate in the creation of a catalogue raisonné.

Following a dispute of authorship that resulted in a 1996 lawsuit, Salomon was awarded possession of the Beaulieu manuscript on the condition that he acknowledge the scholars as co-authors. The court settlement also granted the Beaulieus exclusive right to publish their scholarship independently should Salomon choose not to and compelled the Vuillard heir to provide them with any relevant archival material. Salomon instead chose to pursue the project with Wildenstein and Cogeval, their preferred author. Although Salomon later denied the Beaulieus access to the requisite illustrations and documents, a subsequent 1999 ruling reinforced the prior agreement.

The suit against the National Gallery, filed on February 9, 2004 in the U.S. District Court for the District of Columbia, charges the museum with violating the Lanham Act, (15

U.S.C. § 1125(a)), a federal trademark and unfair competition law that imposes liability for falsely designating the origin of goods or services. The complaint alleges that by appropriating and misattributing the Beaulieu text, the museum "wrongfully deceived the public into believing that the National Gallery and the authors listed in the NGA catalogue were responsible for the research, ideas and texts set forth in the NGA Catalogue." The suit also claims that the catalogue's copyright notification, which acknowledges only the National Gallery and Montreal Museum of Fine Arts as joint authors, constitutes unfair competition. The National Gallery "won't comment" to IFAR on pending legislation, but it has filed a motion to dismiss this suit.

"My view of Vuillard may be highly debatable, but it is my own, and . . . . it owes absolutely nothing to the work of the two plaintiffs, who presume too much."
— Guy Cogeval

The Beaulieus state that the exhibition catalogue "reveals a number of striking similarities, including numerous instances in which research conclusions reflected in the language of the Beaulieu Manuscript have been copied verbatim or reproduced in thinly veiled paraphrase." Several excerpts from the catalogue's chronology are suggestively similar; yet, a number of other representative extracts cited in the complaint bear only a plausibly coincidental resemblance to the Beaulieu passages when viewed in context [see box]. Cogeval points out that "any art historian knows that chronologies do not vary much from one exhibition catalogue to another or from one monograph to another, as they are usually written in a telegraphic style and state historical facts that cannot be invented or changed under the guise of originality."

The Beaulieus also allege that various analyses, insights and factual findings presented in the catalogue were derived from their manuscript. But Cogeval strongly denies that. He told IFAR that the "petty quibbling and nosing out of minutiae tends to obscure the important thing. A book is first and foremost created from a point of view; it reveals the choices decided on, the guidelines. It means dividing the text into various movements, and deliberately exaggerating and highlighting some aspects. There is no trace of anything like this in the Leduc-Beaulieu manuscript, which is why the first publisher . . . judged it unpublishable. Contrary to what they allege in the press, that was when the Leduc-Beaulieus' misfortunes began, when one of France's leading art publishers turned down their work. . . . My view of Vuillard may be highly debatable, but it is my own, and . . . . it owes absolutely nothing to the work of the two plaintiffs, who presume too much."

The complaint asserts that the authors of the exhibition catalogue had liberal access to the Beaulieu manuscript filed in the Salomon archives and contained on a diskette that Ms. Beaulieu submitted to Philip Connisbee, Senior Curator of European Paintings, in 1993 as part of an application for a curatorial position at the National Gallery. Although Beaulieu insists the plagiarized sections were written after her two-year contract with the museum expired, it is unclear to what extent the text fell within the scope of her employment. As quoted in the complaint, the National Gallery avers "this is a complicated matter, spanning many years and several contractual relationships . . . [and it is], for example, far from clear what work was done when, for whom, or even by whom."

In a corresponding suit filed in the U.S. Court of Federal Claims on January 29, the Beaulieus brought an action for federal copyright infringement against the United States pursuant to 28 U.S.C. § 1498(b) asserting that the National Gallery, a government institution, violated the Copyright Act of 1976, as amended, (17 U.S.C. § 501), by reproducing, publishing, distributing and selling the exhibition catalogue. Having registered their manuscript under U.S. and French copyright law on November 2003 and December 19, 2002 respectively, the Beaulieus maintain their text is an "original literary work of authorship" within the meaning of U.S. copyright law. In its response to the complaint, the government argues that much of the disputed text constitutes raw factual information rather than copyrightable subject matter, and the portions subject to copyright pro-

tection were written during Beaulieu's contractual relationship with the museum.

A related French claim filed in the Tribunal de Grande Instance de Paris in January similarly alleges that the catalogue raisonné *Vuillard: Critical Catalogue of Paintings and Pastels* plagiarized the Beaulieus' manuscript. The suit accuses catalogue authors Guy Cogeval, Antoine Salomon, Mathias Chivot, and the Wildenstein Institute of misappropriating and reproducing their scholarship in violation of articles L°121-1 and L°335-2 of the French Intellectual Property Code. Also implicated are the co-publishers, Skira Editore and Wildenstein Institute Publications.

The National Gallery has filed a motion to dismiss the Lanham Act suit, and the related claim against the United States is in the case development phase. No trial date has been set.

S.F. and Rebecca Friedman, Law Intern, IFAR

SELECTED BEAULIEU ALLEGATIONS OF "SIMILARITIES"

NGA Exhibition Catalogue	Beaulieu Manuscript (1996)
Chronology 1888 (p.474) "In July, Vuillard is accepted for the second time into the "painting" section of the École des Beaux-Arts. In October, he joins the class of Gérôme: "88 spell at school, Gérôme 6 weeks." (*Journal*, II.2, fol. 12r, November 12, 1908). In November, he begins keeping a journal. Aside from a break between 1898 and 1905, he will keep it regularly until 1940, recording his daily observations in a telegraphic style."	**1888** "November: begins keeping a journal."
Chronology 1938 (p.482) "In January, Jos Hessel introduces Vuillard to Sam Salz, the famous New York art dealer, who ensures a place for Vuillard's work in the great American collections, and whose portrait the artist will execute in 1939." "On February 5, Vuillard is elected to the Académie des Beaux-Arts."	**1938** "31 January: Jos Hessel introduces Vuillard to the New York art dealer, Sam Salz "5 February: Vuillard is elected to the Académie des Beaux-Arts."
Catalogue #110, (p. 166) ". . . . Cogeval, however, has brought to light a pair of pastel drawings (cats. 109-110) that, along with a study in oil, reveal how the panels were originally installed. The two pastels clearly indicate that the decorations were designed to be hung in two groups of three panels each, stacked one over the other above two separate doors. (The top of a door frame is visible at the bottom of each pastel.)"	"The two pastels, however, clearly indicate that the decorations were to be arranged in two groups of three panels each, stacked over two separate double doors. (The top of a door frame is visible at the bottom of each pastel.)"

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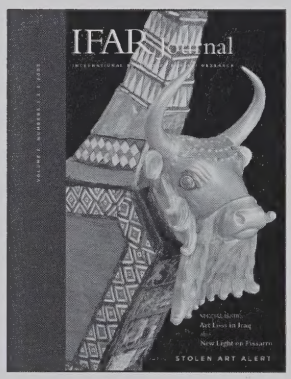

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IFAR FLASHBACK

25 YEARS AGO

"Three masterpieces by Paul Cézanne stolen in December from the Art Institute of Chicago were recovered in Chicago on May 23. Laud Spencer Pace, a former Art Institute employee, was arrested in connection with the theft. All the paintings were returned in good condition.

Pace has been under suspicion since the theft occurred. A former shipping clerk who had worked at the museum for about a year prior to the loss, he had helped to put the three paintings in storage last October. ....

Pace approached the museum recently and sought to collect a reward for return of the stolen works. He was arrested after surrendering the paintings. . . ."

(*Art Theft Archive Newsletter*, Vol. I, No. 5, May 1979)

20 YEARS AGO

" . . . There appears to be an influx of spurious works attributed to the Boston impressionist Edmund C. Tarbell (1862-1938). Unfortunately, some of them have been catalogued as originals in the 1980 catalogue raisonné on the artist written by Patricia Jobe Pierce. Two of these works, both pastels, have recently been examined by IFAR and have proved to be forgeries. . . . These two pastels, as well as a number of other works that have been questioned by scholars and experts in the field, purport to be studies for well-known original oil paintings by Tarbell. An exhaustive study of these works leads us to believe that they were executed within the last decade or so. . . ."

(*Art Research News*, Fall 1984)

10 YEARS AGO

"The new $30 billion federal crime bill has defined an important new art crime – theft from museums, now a federal offense punishable by up to ten years in prison. Within the 1,100-page measure signed into law on September 13 is a section titled 'Theft of Major Artwork.' This unheralded addition to the bill underscores the magnitude that art crimes have now reached, demanding federal attention.

Before the enactment of this bill, the National Stolen Property Act provided penalties for anyone caught receiving stolen art worth at least $5,000 or transporting stolen works across state lines or international borders. Now the reach of federal law is being taken a step further, protecting stolen works of art from museums even if the works never leave the state. . . ."

(*IFARreports*, Vol 15, no. 10, October 1994)

5 YEARS AGO

"A forged Renoir painting, *La Loge* (also known as *Au Théatre*), is in the hands of the Los Angeles Police Department after more than ten years of passing through the art market under questionable practices. During this period, as documented by the LAPD, numerous people expressed interest in the painting, but its authenticity was invariably questioned. The complicating factor was a (subsequently repudiated) certificate of authenticity signed by the late François Daulte."

(*IFAR Journal*, Vol. 2, No. 2, Spring 1999)

COURBET, OR NOT COURBET, THAT IS THE QUESTION

PETRA TEN-DOESSCHATE CHU*

INTRODUCTION**

While problems of attribution are common to many nineteenth-century French painters, Gustave Courbet (1819-1877) is a champion in the arena of dubious authenticity. Even during his lifetime, the market was flooded with outright forgeries as well as with works by his students and followers to which unscrupulous dealers had added Courbet's signature or initials. The problem is especially thorny for the artist's late landscapes and still lifes. Because few of Courbet's paintings of the last six years of his life can be attributed to him with absolute certainty, there is no adequate body of work that can serve as a benchmark. Thus, connoisseurs are forced to compare works of the seventies with those of the sixties, without truly understanding the evolution

"Even during [Courbet's] lifetime, the market was flooded with outright forgeries . . ."

that took place in the artist's painting style during the final years of his career. What complicates matters further is Courbet's known practice of making copies or pastiches of his own paintings, sometimes years after he had first painted them. This makes it all the more difficult to trace a clear path of the artist's stylistic development.

Readers who expect to find in this article a recipe for separating true from false in the body of work attributed to Courbet will be disappointed. Such a recipe, unfortunately, does not exist. Instead, the purpose of this article is to highlight the authentication problems presented by Courbet's paintings, especially

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**This article was written during time spent as a fellow at the Netherlands Institute for Advanced Study in Wassenaar. I am extremely grateful to NIAS for five months of uninterrupted time to write and reflect. My thanks go as well to Seton Hall University for allowing me a one-semester leave of absence.

[1] In writing this article, I have profited greatly from the following works: Robert Fernier, *Courbet.* 2 vols. (Paris: Fondation Wildenstein, 1977-78); Pierre Chessex *et al., Courbet et la Suisse.* Exhibition Catalogue (Château de la Tour-de-Peilz, 1982); Klaus Herding, "Zur Courbet's Spätwork," *Pantheon* 44 (1986): 75-86; Jean-Jacques Fernier *et al., Cherubino Pata (1827-1899): Le vrai-faux-Courbet.* Exhibition Catalogue (Ornans: Musée Courbet, 1988); Annie Agache, "Antonin Fanart et son temps. Etude d'un paysagiste comtois et contribution à la vie sociale en Franche-Comté au XIXème siècle." Doctoral thesis (Besançon: Université NR, 1990); Petra ten-Doesschate Chu, ed. *Letters of Gustave Courbet* (Chicago: The University of Chicago Press, 1996); Jean-Jacques Fernier, "The Natures of Courbet," in: *Courbet: The Late Paintings.* Exhibition Catalogue (New York: Salander-O'Reilly Galleries and Roslyn Harbor: Nassau County Museum of Art, 1998); and Claudette Mainzer, "Les suiveurs de Courbet, in: *Gustave Courbet et la Franche-Comté.* Exhibition Catalogue (Besançon: Musée des Beaux-Arts, 2000).

FIG. 1 Vendôme Column, Paris, with apparatus for toppling it (Photo: c.1871). Courbet helped topple the Column, for which he was fined and sent to prison.

the late ones, and to ground them in their historical context.[1]

GUSTAVE COURBET

The story of Courbet's life is familiar to all who are interested in nineteenth-century French art. Born in Ornans, a small village near the Franco-Swiss border, Courbet came to Paris to become the champion of the new Realist movement of the mid-nineteenth century. A master of self-promotion, he managed to become one of the most talked-about artists of his time. Fiercely anti-establishment, he took on, in paintings like *A Burial at Ornans* (Paris, Musée d'Orsay), *The Bathers* (Besançon, Musée Fabre), and *The Return from the Conference* (destroyed), such powerful French institutions as the Academy and the Church. After the dissolution of the Second Empire in September 1870, he recommended the removal of the Vendôme Column, hated symbol of Bonapartist imperialism (Fig. 1). Nine months later, as a member of the Paris Commune, he participated in the

"What complicates matters further is Courbet's known practice of making copies or pastiches of his own paintings . . ."

Column's dismantlement. This last act of defiance cost him dearly and became the defining moment of the rest of his life and career.

AFTER THE FALL

For his participation in the Commune and the destruction of the Vendôme Column, Courbet was condemned to a fine and six months in prison. Having served his term, he returned to his native Franche-Comté region in the summer of 1872. As he was in dire need of money, he sold part of the contents of his Paris studio to the art dealer Paul Durand-Ruel.[2] He also embarked on the wholesale production of new works, mostly landscapes and still lifes. To maximize his productivity, he engaged the help of several landscape painters in the region, including François ("Jean-Jean") Cornu (1819-1876), Marcel Ordinaire (1848-1896), and Alexandre Rapin (1839-1889).[3] All three artists

[2] A separate article could be devoted to the fate of the contents of Courbet's Paris studio after the artist's arrest and imprisonment. It is an extremely complex story that also has a bearing on the authentication of his works, most notably the ones of the 1860s.

[3] On August 14, Courbet informed his friend Jules Castagnary that Rapin, Cornu, Pata, and some unnamed Swiss artists had joined him in the Franche-Comté. See Chu 1996, p. 464.

FIG. 2 Alexandre Rapin, *Puits-noir, Franche-Comté.* Oil on canvas, 140 x 210 cm. Montbéliard, Musée du Château.

FIG. 3 Gustave Courbet, *Entrance of the Puits-noir Valley, Doubs, at Dusk*, 1865. Oil on canvas, 94 x 135 cm. Paris, Musée d'Orsay.

belonged to a colony of landscape artists who worked in and around Nans-sous-Sainte-Anne, a small village not far from Ornans.[4] Because their landscapes depicted sites that were similar to those painted by Courbet, they often superficially resembled the latter's works. Rapin's undated *Puits-Noir, Franche-Comté* (Fig. 2), for example, calls to mind Courbet's paintings of the same motif (Fig. 3), though Rapin's is lighter and less broadly painted.

In addition to the three artists from his native region, Courbet was also joined by Cherubino Pata (1827-1889). Born in the Ticino region of Switzerland, Pata had studied at the Ecole des Beaux-Arts in Lyon. From there he had traveled to Paris, where he first exhibited at the Salon of 1868. Sometime in the late 1860s, he met Courbet, who granted him permission to copy the *Woman with the Parrot* (Fig. 4) in his atelier at the rue Hautefeuille. In due course, Pata became Courbet's *factotum*, involved in all aspects of the production and marketing of his master's work. When he first met Courbet, Pata painted pleasant landscapes in a belated Romantic mode (Fig. 5), but after 1870, he gradually adopted not only Courbet's subjects but also his style and technique (Fig. 6).

Little is known about the nature of the collaboration between Courbet and his "assistants." Sarah Faunce, author of one of the two forthcoming new catalogues raisonnés of Courbet's paintings (see below), is of the opinion that they did little more than stretch and coat canvases.[5] Her judgment is confirmed by a letter from Courbet to Pata (February 26, 1873), in which he asked his assistant to send him some small canvases with a "black undercoating." [6] That evidence notwithstanding, it is difficult to understand why Courbet needed the help of so many artists if stretching and coating canvases was all they did. Writing to his sisters in April 1873, Courbet consistently used the word "we," when talking about the production of his paintings. "We have no end of commissions . . ."; or, "we have already delivered a score, we have as many still to deliver." In the same letter, he wrote that Cornu, Edouard, and Pata were "preparing" paintings, for which he paid them a percentage.[7] The question is what Courbet meant by "prepare." According to the artist's biographer Georges Riat, Courbet's assistants, especially Pata, did a great deal more than stretching and coating canvases. Riat even claims that Pata made finished landscapes, which were retouched and signed by Courbet.[8]

Several of the landscapes Courbet and his assistants produced in 1872 repeated motifs that the

4 On the artists' colony of Nans-sous-Sainte-Anne, see Agache 1990, pp. 279-281.

5 Telephone conversation, January 2004.

6 Chu 1996, p. 489.

7 *Ibid.*, p. 495.

8 Georges Riat, *Gustave Courbet, peintre* (Paris: H. Floury, 1906), p. 344.

FIG. 4 Gustave Courbet, *Woman with a Parrot*, 1866. Oil on canvas, 129.5 x 195.6 cm. All rights reserved. Metropolitan Museum of Art. Cherubino Pata copied this painting with Courbet's permission and later adopted Courbet's style and technique.

FIG. 5 Cherubino Pata, *Hamlet on a River Bank* (perhaps identical to *Bank of the Seine at Corbeil*, Salon of 1869). Current whereabouts unknown. After Fernier 1988, p. 75.

master had treated earlier. The catalogue raisonné of Courbet's work, published by Robert Fernier in 1977-78, reproduces a number of seascapes that bear Courbet's signature and the date, 1872. Though the artist had visited the Normandy coast several times in the late 1860s and had painted numerous seascapes in Deauville and Trouville, he did not return there after 1870. That means that these paintings were entirely based on existing compositions. The same appears to have been true for many landscape paintings of the Franche Comté, dated in the same year, which also appear to be pure atelier productions.

COURBET IN SWITZERLAND

On May 30, 1873, the National Assembly of the French Third Republic passed a bill to re-erect the Vendôme Column. The bill contained a proviso that construction would start only after a civil tribunal had determined the financial responsibility of those – foremost Courbet – who had participated in its destruction. Pending the decision of the tribunal, the Minister of Finance ordered the sequestration of their assets. The seizure of Courbet's property began on June 23. Having salvaged what he could, the artist left one month later for Switzerland, where he would live until his death in December 1877.

As he left France with little or no money, Courbet had to make a living in Switzerland by painting and selling new works. In Switzerland as in France, he appears to have surrounded himself with assistants, who helped him in a variety of ways. Among them were Marcel Ordinaire, who had followed him to Switzerland, as well as the French painter Ernest-Paul Brigot (b. 1836) and the Polish André Slomszynski (1844-1909) or "Slom." [9] Pata, his faithful aid, traveled back and forth between France and Switzerland, to look after his affairs.

In Switzerland, Courbet found dealers in Paul Pia, an exiled French engineer, who had opened a gallery in Geneva; as well as in Gustave Petrequin-Dard, a painter and part-time art dealer in Lausanne. The Swiss market was limited, however, and Courbet had to look for buyers elsewhere–especially in France and England. International sales presented their own problems, as it was difficult to send paintings across the French border for fear of seizure.

"... it was difficult to send paintings across the French border for fear of seizure. To smuggle them into the country, Courbet and his assistants ... invented ingenious systems."

9 Fernier (1988, p. 88) mentions several other artists but it is difficult to assess the role of assistants during Courbet's Swiss period as there is little documentary information. Perhaps the most important document alluding to collaboration is a letter by Brigot, written on March 4, 1874, in which he wrote to Courbet, "I have heard from Castagnary that you have many orders and not enough time. If you would like a strong helping hand, I'd be at your disposal. I don't need to tell you that together we would get a lot of work done. I have about four or five months ahead of me." *Ibid.*, 90. Author's translation. Another important document is an announcement on p. 24 of *Les Beaux-Arts en Suisse* en 1874, published in Bern in 1875, that reads: "Courbet and his pupil Patta [sic] have opened their atelier in La Tour-de-Peilz near Vevey, after having lived for some time in the Valais region." Cited in Pierre Chessex, "Courbet en Eldorado: Les années d'exil en Suisse, 1873-1877," *Ligeia: Dossiers sur l'art* 41-44 (October 2002-June 2003): 84. Author's translation.

FIG. 6 Cherubino Pata, *The Puits-noir Valley*, c. 1872(?) Oil on canvas, 48.5 x 64.5 cm. Ornans, Musée Gustave Courbet.

FIG. 7 Marcel Ordinaire, *Jura Landscape*. Oil on canvas, 53 x 81 cm. Art Institute of Chicago. Signed lower left "G. Courbet ..67." Restoration revealed signature lower right, "Marcel Ordinaire."

"While Courbet's followers and unscrupulous dealers were merrily adding works to Courbet's *oeuvre*, professional forgers were also busy . . ."

To smuggle them into the country, Courbet and his assistants, most notably Pata, invented ingenious systems. The painter Ernest Biéler recalled how Courbet hid his signature underneath a piece of cigarette paper, which he subsequently covered with paint.[10] According to Jean-Jacques Fernier, the artist would also ship unsigned works to France, asking Pata to add his initials or a full signature later. Alternatively, he would provide Pata with signed certificates that the latter could glue on the back of the paintings once they had arrived in France.[11]

Such practices obviously led to confusion and encouraged fraud. If Courbet himself allowed others to sign his paintings, what prevented artists or dealers from putting his name to works they themselves had painted or owned? As early as 1873, his friend Castagnary sent a letter to Courbet warning him that many *faux Courbet* were being sold in Paris.[12] He blamed Courbet's assistants for their dishonesty, but it is more likely that crooked dealers affixed the master's name to canvases by his followers. Among them may have been Alexandre Bernheim, a dealer on the rue Lafitte in Paris, whom Courbet accused of filling Paris with forgeries of his paintings.[13] Several examples of canvases bearing phony Courbet signature have been discovered in recent years. A *Jura Landscape* in the Art Institute of Chicago (Fig. 7), for example, was found, in the course of restoration, to have an overpainted signature of Marcel Ordinaire in the lower right corner, and, in the lower left, the signature of Courbet and a date, "..67."

While Courbet's followers and unscrupulous dealers were merrily adding works to the artist's *oeuvre*, professional forgers were also busy producing Courbet landscapes and still lifes, for which there appears to have been an insatiable market. For despite Courbet's political extremism or, perhaps, because of it, his already high visibility had increased and led to a steady demand for his works. As early as June 16, 1874, an article in *La République française* claimed that a "factory" of Courbet counterfeits had been established in Geneva. Courbet's dealer Paul Pia immediately sent a response, countersigned by Courbet, asserting that his shop in Geneva had nothing to do with those phony Courbets.

"An article . . . of 1890 . . . describes the discovery by Courbet's sister Juliette of a brisk trade in Courbet fakes in Brussels."

They could do little, however, to stop the production of fakes. The

[10] Cited in Fernier 1988, p. 40.

[11] See Fernier 1988, pp. 86-87 and Fernier 1998, p. 22.

[12] Riat 1906, p. 344.

[13] In a letter to Jules Castagnary of March 26, 1874. Chu 1996, p. 525.

forgery of Courbet's work continued unabated even after his death. An article in *Le Temps* of August 26, 1890, entitled "Le Commerce des faux Courbet," describes the discovery by Courbet's sister Juliette of a brisk trade in Courbet fakes in Brussels.[14] Apparently, these forgeries were produced in and around Paris, where a "cartel" of artists made a specialty of producing various types of Courbet landscapes. One of them specialized in "light greens," another in sous-bois and "mossy rocks," and a third in wooded landscapes with deer and other animals.[15] The article also implicates a former "student and friend" of Courbet (perhaps Pata?), who is accused of imitating the work of his master so well that one of his *Falaises* was accepted by the jury of the French art show at the International Exposition of 1889, while an authentic work by Courbet was refused.[16]

CAVEAT SPECTATOR

It is clear from the above that all who study Courbet's late works, especially his landscapes, must be aware of the attribution problems they present. Such works may be:

1. Works by his own hand with an authentic signature "G. Courbet" or just his initials, "G.C.");[17]

2. Works by his own hand with a forged signature (see above);

3. Works painted by his assistants, retouched by Courbet and bearing his authentic signature.

4. Works begun by Courbet and finished by his assistants, bearing his authentic signature. Jean-Jacques Fernier believes that such works date from the very end of Courbet's career, when, worn down by his legal problems and suffering from various alcohol-induced ailments, Courbet was unable to deliver works and had his assistants finish them.[18]

5. Works painted by his assistants, with a forged signature. Such signatures may have been applied by Courbet's followers themselves. More often than not, however, they seem to have been added by dealers who removed the original signature and added Courbet's.

6. Forgeries by artists other than his assistants, painted any time between the 1870s and the present.

"Few works of the 1870s have a reliable provenance that allows us to trace their ownership history back to the artist."

DOCUMENTATION AND BENCHMARKING

Few Courbet paintings of the 1870s have a documented history. The artist rarely took part in exhibitions after his works were rejected from the Salon of 1872 and the International Exposition in Vienna in 1873. To the ones in which he did participate, such as the exhibition of the Austrian Art Union (Oesterreichischer Kunst-Verein) in 1873, he mostly sent earlier works. Only a handful of his late paintings are known to have been shown by the artist in public between 1873 and his death in 1877.[19] Courbet's letters, which, before 1872 had contained much information about works in progress, rarely touched on the subject after that date. The artist's voluminous correspondence of the 1870s deals nearly exclusively with his legal problems. Last but not least, few works of the 1870s have a reliable provenance that allows us to trace their ownership history back to the artist. All this means that there are not many works of the 1870s that can be attributed to Courbet with certainty and can serve as a touchstone against which to measure others.

[14] For a full text of the article, see Fernier 1977-78, pp. 340-341.

[15] Fernier 1977-78, II, p. 340.

[16] I have been unable to verify this assertion.

[17] For samples of Courbet's signatures, see Fernier 1977-78, II, pp. 333-337. Only in a few instances did Courbet use his full signature "Gustave Courbet."

[18] Fernier 1998, p. 22.

[19] For an in-depth discussion of Courbet's exhibition activity in Switzerland, see Chessex 1982, pp. 47-66.

FIG. 8 Gustave Courbet, *Sunset, Vevey*, 1874. Oil on canvas, 65.4 x 81.3 cm. Cincinnati Art Museum. Gift of George Hoadly.

It is true that, upon Courbet's death, an inventory was made of the works in his studio by Dr. Blondon, a friend of the artist's family.[20] This list is especially helpful to identify the portraits and figure paintings Courbet painted during his stay in Switzerland. Among them are, for example, the portrait of Courbet's father in the Petit Palais in Paris, and the *Vigneronne de Montreux* in the Musée Cantonale in Lausanne, both painted in 1874. It is less useful for the landscape paintings as the titles are frequently vague and nondescript and many entries lack dimensions. Moreover, it is not certain that all the paintings included in Blondon's list were completely authentic. Nonetheless, this list, in combination with other data, allows us to identify some works with a good deal of certainty, among them the large sketch of the *Dent du Midi*, now in the Cleveland Museum of Art, and the *Château de Chillon* in the Musée Gustave Courbet in Ornans.

In studying the late works that can be attributed to the artist with certainty, it is clear that, until ill health prevented him from painting altogether, Courbet did not lose any of his faculties, despite his severe alcoholism. This becomes clear when one looks at the beautiful *Sunset, Vevey* (Fig. 8) in the Cincinnati Art Museum, a painting that is on a par with the best seascapes Courbet produced in Trouville, on the Normandy Coast, in the late 1860s. *Sunset, Vevey* was bought from the artist by the American journalist Moncure Conway, acting on behalf of Judge George Hoadley, the future governor of Ohio, who had become interested in Courbet for his politics. When Conway visited Courbet in the winter of 1874, the journalist expressed a preference for Courbet's figure paintings, finding the artist's mountain scenes "powerful but with somber tone." To this, the artist responded tellingly: "I cannot insert a figure in the presence of these grand mountains. It would belittle them. And, indeed, since I left Ornans I have no heart to paint human figures."

PROVENANCE

While provenances are helpful in guaranteeing the authenticity of works of art, they can also be problematic and must always be judged at face value and on a case-by-case basis. In Courbet's case, this is especially important. As he was the victim of the deceit of some of his closest relatives and companions, it is often not sufficient to retrace the provenance of a work to one of the artist's family members or friends—it must go back to the artist himself.

Case in point: some twenty years ago, an exhibition was held in the museums of Baden-Baden and Zürich, of a newly discovered

[20] The list, which also includes the paintings that were in the shop of Paul Pia, was copied and annotated by Charles Léger in *Courbet et son temps* (Paris: Editions Universelles, 1948), 165-169. Léger added a list of his own (pp. 169-173), which, done seventy years after Courbet's death, may be less reliable. Blondon's original list and other notes may be found in the Bibliothèque de Besançon.

[21] Klaus Herding und Katharina Schmidt, *Les voyages secrets de Monsieur Courbet : Unbekannte Reiseskizzen aus Baden, Spa und Biarritz* : Exhibition Catalogue (Baden-Baden: Staatliche Kunsthalle and Zürich: Kunsthaus, 1984).

"Courbet was the victim of the deceit of some of his closest relatives and companions . . ."

cache of drawings and oil sketches by Courbet. Organized by Klaus Herding and Katharina Schmidt, *Les voyages secrets de Monsieur Courbet* featured works whose provenance went back to Courbet's sister Zoé.[21] Moreover, all drawings and sketches bore the following stamp: "*Hoirie Courbet* or "Succession Courbet." While the stamp and the provenance were adduced as proofs of the attribution of these drawings and sketches to Courbet, in fact they were far from conclusive. The stamp is not found on any other work by Courbet, and the word "hoirie," is atypical of atelier stamps of the nineteenth century. The provenance also raised questions because Zoé is known to have had a very hostile relationship with her brother, especially during his final years. Courbet's letters of the 1870s refer repeatedly to the attempts of Zoé and her husband Eugène Reverdy to swindle him in every way possible. As a consequence, Courbet excluded her from his will, leaving all his assets to his sister Juliette.

Today, it is generally accepted that the drawings and sketches shown in the Baden-Baden and Zürich exhibitions are not by Courbet. Instead they may have been the work of Reverdy, a minor and completely forgotten painter.[22] It is difficult to determine who was responsible for putting the stamp "Hoirie Courbet" on these works and for marketing them as Courbets, and it is not relevant here. What *is* important is that the case underscores the need for the provenance to be traced back to Courbet himself.

CATALOGUES RAISONNÉS

Separating the true Courbets from the false is the self-imposed task of the authors who have embarked on the artist's catalogues raisonnés. One such catalogue was prepared by the late Robert Fernier, who undertook his task under the auspices of the Fondation Wildenstein in Paris. Fernier, a painter who cooperated with the art historian Gaston Delestre until the latter's death in 1969, did a yeoman's job of documenting and researching Courbet paintings across Europe, Canada, and the eastern seaboard of the United States. His two-volume catalogue raisonné, published in 1977-78, is still an indispensable reference work for those who study Courbet's paintings, but it is no longer considered authoritative.

Fernier's son Jean-Jacques, architect, Curator of the Musée Courbet at Ornans, and President of the Amis de Gustave Courbet, is currently working on a revised edition of his father's catalogue. His plan is to abandon the chronological classification and to replace it with a thematic ordering. This strategy allows the reader to compare Courbet's numerous versions of different themes, such as his views of the Puits-noir, the Norman coast, waves, the source of the Louve river, etc.

Over the past twenty years, Jean-Jacques Fernier has done more than anyone to confront the issue of Courbet and his collaborators. In 1988, he organized an exhibition in Ornans entitled Cherubino Pata – Le Vrai-Faux Courbet. The book published in conjunction with this exhibition includes an inventory of Pata's works. The majority of the paintings inventoried bear Courbet's signature or initials. Naturally, not everyone agrees with Fernier about his rigorous reattribution of "Courbets" to Pata. Nonetheless, he has focused attention on the complex attribution problems posed by Courbet's late work, and he has raised the possibility that many paintings currently attributed to the master were actually the work of his students, if not of deliberate forgers.

" [Fernier's] two-volume catalogue raisonné, published in 1977-78, is still an indispensable reference work for those who study Courbet's paintings, but it is no longer considered authoritative."

Meanwhile, in New York, Sarah Faunce, curator emeritus of the Brooklyn Museum, has been working since 1998 on an entirely new catalogue raisonné of Courbet's paintings. Faunce has the advantage that much of her groundwork has already been done. She thus

[22] On the arguments for Reverdy's authorship, see my review of the exhibition in *Master Drawings* XXII, 4 (1984): 455-461.

can spend more time documenting Courbet's paintings, a task that is essential for the proper attribution of the artist's works. It is hoped that her work will result in the expansion of the number of late works that can be irrefutably attributed to Courbet so that a clearer picture will emerge of the characteristics of the artist's late style.

[23]See Marie-Christine Maufus, "Le Wildenstein Institute et le nouveau catalogue de l'oeuvre de Gustave Courbet," *Ligeia: Dossiers sur l'art* 41-44 (October 2002-June 2003): 176-177.

CONCLUSION

Documentation is as important for the authentication of Courbet's paintings as it is for any other artist. Provenance, exhibition history, the mention of works in the artist's correspondence, their presence on inventories of the contents of the artist's studio– these are all forms of documentation that, if not a guarantee, at least affirm the attribution of a work to the artist. The formation of a clearer picture of Courbet's late style is dependent on the establishment of a critical mass of authentic works that will help discerning critics attribute undocumented works to the artist on the basis of well-founded visual comparisons.

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MUSEUM LITIGATION UPDATE: 2004

STEPHEN E. WEIL**

EDITOR'S NOTE: *The following article is an edited version of a talk delivered on March 25, 2004 by scholar/attorney Stephen E. Weil at the 32nd annual ALI-ABA (American Law Institute-American Bar Association) Course of Study on Legal Problems of Museum Administration. It summarizes recent litigation involving American museums so cogently that we thought IFAR Journal readers would find it of interest. The Course of Study was co-sponsored by the Smithsonian Institution with the cooperation of the American Association of Museums (AAM).*

Whatever the reason – whether the stars that guide the destinies of museums have been out of alignment, whether it's been an adverse side-effect from the economy, or whether we've just suffered a spell of old-fashioned bad luck – this past year was a particularly rough one for a number of museums and related institutions, a year when they had to endure more than their ordinary share of tumultuous governance and/or downright distress. We'll start with a few museum or museum-relevant situations that are still pre-litigious, then move on to some that are already there.

CLOSING OF THE BELLEVUE ART MUSEUM

Among those enduring the greatest distress this past year was the Bellevue Art Museum in Bellevue, Washington – a suburb of Seattle. On September 30, 2003, having run out of operating funds and reluctant to increase its debt, the Museum laid off 27 of its still remaining 30 staff members – the staff had recently before been as large as 44 – and shut its doors to the public. Now furnished with a set of new vision and mission statements – henceforth, it says, it will focus on crafts, design and the art of the Northwest – the Museum originally planned to reopen this summer. The date has now been pushed back to the fall.

What went wrong? A number of things, apparently. For one, the Museum was seemingly a victim of the dot-com bust, particularly severe in and around Seattle. For another, it apparently lacked the internal financial controls that would have kept its Board – ignorant until almost the end that all of its money was gone – fully informed of its current financial condition. For still another, some major donors became disenchanted and decamped. Perhaps above all, though, the Museum appears to have grown too

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big and too fast. Starting as a street-based arts and crafts fair in the 60s, it had reconfigured itself into a museum in 1975 and then moved first into a surplus schoolhouse, then into a former funeral home, and then into to an isolated space on the top floor of a local shopping center. With the prosperity of the 90s, though, nothing would do but that it have its own purpose-built building, and not just any building but a signature building designed by a name architect, by what one critic recently called a "starchitect." In this case, the "starchitect" was the New York-based Steven Holl.

"This past year was a particularly rough one for a number of museums and related institutions . . ."

By the time Bellevue's new signature building opened in January, 2001, its $23 million construction cost was so far over budget that all of the funds originally set side for an operating endowment had been diverted instead to pay the contractors. What the Museum got in exchange was an award-winning building that, to a very high degree, expressed the artistic vision and poetic ideals of its highly individualistic architect. Not surprisingly, what it also got – given its abdication of control to the architect – was a building that was almost totally useless for mounting the kinds of exhibitions that it hoped to show. With its operating endowment gone, with its income from admissions and auxiliary activities far below their pre-opening projections, with the defection of major donors, and with the local economy in a tailspin, the Bellevue Art Museum and its elegant new facility struggled along for a little over two-and-a-half years, then collapsed. In fairness to the architect, it should be noted that he has, in fact, volunteered to return to Bellevue and remodel the museum for its possible next incarnation.

ARIZONA MUSEUM BOARD FORCED TO RESIGN

Let's cut to the Museum of Northern Arizona (MNA for short) in Flagstaff – another institution that's also gone through some recent distress but where there's been a totally different outcome. For those unfamiliar with it, the MNA was founded in 1928 and today holds nearly five million objects in its anthropology, geology, biology and fine arts collections. In July 2003, in what was perhaps an unprecedented move within any American museum – what it amounted to, really, was a revolution – the organization's membership initiated and then successfully carried through a recall process that resulted in the summary removal from office of the Museum's entire 16-member Board of Trustees.

The events leading up to the Board's recall date back to the spring of 2002. The MNA was, at that point, without staff leadership. The last regular Director had just recently left and – pending the recruitment of a successor – one or another Board member was filling in on an interim basis. It was also in the midst of a cash crunch. Reportedly, the money on hand was only sufficient to meet three week's worth of staff salaries. What happened next is unclear. Either the Trustees talked themselves into believing – or, alternately, somebody else talked them into believing – that under such urgent financial circumstances it was within normal museum practice to suspend the institution's existing Collections Management Policy and sell off some collection objects in order to raise a quick chunk of operating funds. In any event, that's what they did. They sold 21 objects from the collection – nine Navajo textiles to a dealer in Santa Fe, the rest to a consortium of dealers in California – for a total price of just under $1,000,000. The Trustees used this money to meet ongoing operating expenses. The dealers, in turn, resold the objects to a variety of private and public buyers across the country.

". . . The membership initiated . . . a recall process that resulted in the summary removal from office of the Museum's entire 16-member Board of Trustees."

Several weeks later – on June 8, 2002 – the MNA held its annual membership meeting. At that meeting, the membership learned for the first time about the sale. In at least two respects, however, the Board's report to the membership was less than wholly accurate. First, it reported that the entire group of objects had been sold, in the words of the Board's Chairman, to "one person who will see to its upkeep and preservation." (Not recorded in the minutes, but recalled by

several participants in that meeting, was also an assurance that this mythical buyer would, upon his death, leave the objects as a group to a "university collection.") The Board also said that the objects sold were "not core to the museum's collection" – a conclusion with which many of the members were ultimately to disagree.

As the actual facts began coming to light, a group of donors, former Trustees and others close to the institution – convinced that the Board had deliberately tried to deceive them – began to explore what remedial steps might be taken. Compounding their anger was still another move by the Board – an attempt to close down the MNA's geology department notwithstanding that its operation was largely funded through government grants and contracts together with a separate endowment. The Board told Museum members that it had informed the endowment benefactor of its intention, but it turned out that it had not. Complaints were lodged with the Arizona Attorney General and with the AAM. They also sought legal counsel concerning the possibility of recovering some or all of the deaccessioned objects.

The Attorney General, at least overtly, remained on the sidelines – watchful but not actually intervening. On the other hand, the AAM's Accreditation Commission did ultimately take action. It withdrew the MNA's accreditation. In line with its long-standing rules of confidentiality, the Commission will not release any information concerning the MNA other than to say that it's not at this time an accredited institution. The MNA, though – with a new Board, a new and highly experienced Director, and a new commitment to transparency – has been more than forthcoming about this. It says that its accreditation was withdrawn both because of its failure to follow its own Collections Management Policy with respect to deaccessioning and also because of its use of deaccessioning proceeds to meet operating expenses – a flagrant violation of the so-called "replenishment rule" of the AAM's Code of Ethics. It also says that it plans to apply for re-accreditation at as early a date as it can – December 2004, one year after accreditation was withdrawn.

RULING ON THEFT FROM A MUSEUM

As sort of an intermission from this distress, let me digress to a rather nice – and actually quite important – case of statutory interpretation. The statute in issue was 18 U.S.C. 668, the statute that Senator Edward Kennedy was able to get through the Congress in the wake of the 1990 Gardner Museum theft and that makes it a federal crime to steal from a museum. The case is *United States v. Pritchard*, 346 F.3d 469, decided by the Third Circuit Court of Appeals last October 17. The defendant Pritchard – himself a former curator at the Civil War Museum and Library in Philadelphia – had been convicted under that statute for stealing a confederate uniform from the Hunt-Phelan Home, a historic house on Beale Street in Memphis that had operated as a not-for-profit tourist attraction from 1996 to 2000. On appeal, he argued that he could not be guilty of that particular crime because the Hunt-Phelan Home failed to meet two of the definitional tests for a museum that were set forth in the statute.

The first of these was that, in order to be considered a museum, an organization had to be "organized and permanent." Because the Hunt-Phalen Home had ceased its operations in 2000, it could not – Pritchard argued – be considered permanent. The Circuit Court quickly chopped that argument to bits. "It is clear," it said, "that the permanence requirement must be viewed as one of intent rather than as one of success. That a museum does not survive to trial cannot realistically be understood to deprive it of having been a museum during the time it was open."

Pritchard's second argument, though, proved more thorny. Another of the statute's definitional requirements was that, to be considered a museum, an organization had to own, utilize and care for the tangible objects that it exhibited to the public. As Pritchard pointed out, those verbs were conjunctive – the organization had to own AND to utilize AND to care for the objects it exhibited. In the case of the Hunt-Phelan Home, it happened that all of the objects

"Since there was no compelling evidence to link the Kennewick Man with any *presently existing* tribe, people or culture, NAGPRA's threshold test could not be met and the statute was not applicable."

on view were, in fact, loans from the individual who had inherited the Home and its contents in 1992 and who had subsequently transferred the Home (but not its contents) to the not-for-profit organization that operated it. Thus, said Pritchard, the Hunt-Phalen Home could not be considered a museum because it displayed only borrowed objects, not objects that it owned.

Although the government argued that the Congress could not possibly have intended so restrictive a definition – one, it said, that would have excluded many great museums in their formative days before their founding families had actually transferred their collections; here it cited the Phillips Collection in Washington, the Whitney Museum in New York and the Gardner in Boston – the Court was unwilling to accept that argument. What it did instead, though, was to conclude that the Hunt-Phelan Home was itself an object – "an object of great historical and aesthetic significance." Arguably, it said, the house itself was even the primary exhibit on the property. Given that the not-for-profit organization clearly owned AND utilized AND cared for the house, it was – ergo – a museum. And Pritchard – ergo – was guilty of violating 18 U.S.C. 668.

THE KENNEWICK MAN

Now to two cases that involve an effort to resolve in American courts what are essentially European legal disputes over the ownership of works of art. Before that, though, I'd like to briefly revisit two federal cases that were followed closely in the press and by museums when they were still at the District Court level and which have now both been affirmed by their respective Circuit Courts of Appeal. The first is that of the so-called Kennewick Man, the nearly complete human skeleton discovered in the state of Washington along the Columbia River in 1996 and estimated to be perhaps 9,300 years old. To greatly simplify, the case of the Kennewick Man is, at bottom, a tug-of-war. On one side is a group of eight scientists, three of them museum-affiliated, seeking to investigate these remains – through dental characteristic studies, diet studies, DNA studies and other means – in an effort to learn more about just how, when and by what groups that part of North America had first been settled. On the other side is a coalition of Native American groups represented by the Department of the Interior who claim – under the 1990 Native American Graves and Repatriation Act (NAGPRA) – that, in accordance with their religion, the remains must be turned over to them for reburial at a secret location and without any further scientific testing.

For NAGPRA to be applicable in such a case, the threshold determination must be whether the remains in question are, in fact, those of a Native American, i.e., as defined in the statute, of an individual "of, or relating to, a tribe, people, or culture that is indigenous to the United States." In the District Court, the Department of the Interior had taken the position that, for NAGPRA purposes, all human remains found in the United States that pre-dated 1492 must *per se* be treated as Native American irrespective of when any particular group might have begun to reside in the area where such remains were discovered and irrespective also of whether the individual whose remains were at issue was or was not culturally or biologically related to any present-day Indian tribes. In rejecting this argument and finding for the scientists, the District Court said that the Congress could have scarcely intended so broad an outcome – one that put "off limits to scientific study" the remains of every individual who had ever passed through what is now the United States. The mere fact that such remains are very old is not, simply in itself, enough to trigger NAGPRA.

In a decision handed down this February, the United States Court of Appeals for the Ninth Circuit unanimously affirmed the District Court's judgment. The case is *Bennichsen v. United States*, 357 F.3d 962. In affirming the lower Court's judgment, the Circuit Court focused particularly on the fact that the Congress had very specifically cast the statutory definition of Native American – "of, or relating to, a tribe, people, or culture that is indigenous to the United States" – in the present tense. By its insertion of the words "that is" before "indigenous" – i.e., a tribe, people, or culture that is indigenous – it intended to refer only to presently existing tribes, peoples or cultures. In an elegantly reasoned opinion – too lengthy to summarize here – it went on to argue that this limited definition was neither arbitrary nor accidental but wholly consistent with NAGPRA's intended purpose.

Since there was no compelling evidence to link the Kennewick Man with any *presently existing* tribe, people or culture, NAGPRA's threshold test could not be met and the statute was not applicable. In this last regard, the Court was particularly dismissive of the oral histories that the Secretary of the Interior had proffered as evidence of a possible cultural relationship between the Kennewick Man and some present-day group of Native Americans. At this point, then, the scientists have finally won. Still unclear, though, is whether any effort will be made to appeal this decision to the Supreme Court which, so far as I know, has never had the opportunity to consider a claim under NAGPRA.

THE SCHULTZ CASE

The second case affirmed on appeal is that of Frederick Schultz, the prominent New York antiquities dealer and a past President of the National Association of Dealers in Ancient, Oriental and Primitive Art. In February, 2002, a jury in the federal District Court for the Southern District of New York found Schultz guilty of conspiring to sell antiquities that had been taken out of Egypt in violation of that nation's 1983 patrimony law.[1] At the trial, there was evidence that Schultz's confederates had taken some of these antiquities out by coating them with plastic and passing them off as tourist souvenirs. They had also provided a provenance for some smuggled objects by inventing a fictitious British collection, complete with artificially aged labels, which had allegedly collected these antiquities as long ago as 1920 when their export from Egypt might still be legal. Schultz subsequently appealed his District Court conviction to the Court of Appeals for the Second Circuit. In June 2003, that Court unanimously affirmed his conviction (*United States v. Schultz*, 333 F.3d 393).

Underpinning Schultz's conviction – and the focus also of the immense public interest in this case, not least in the museum community – was the so-called "McClain" theory, a theory first articulated in a series of late 1970s decisions by the Circuit Court of Appeals for the Fifth Circuit. Central to those decisions was a dealer in smuggled artifacts named Patty McClain who, with her confederates, had been arrested in Texas and charged with the unlawful transportation of stolen goods in interstate commerce. What was novel in the case was that, as used by the Justice Department, "stolen" did not have its customary meaning, i.e., that the goods in question had been taken away from their rightful owners by force or guile. As used in the McClain indictment, stolen simply meant that these were goods as to which Mexico had declared itself to be the owner under its patrimony laws and with which McClain was dealing without

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[1] See articles in *IFAR Journal*, Vol. 4, nos. 2 & 3 and Vol. 5, no. 4.

that government's permission. That the Mexican government had never reduced these particular goods to actual possession – that these goods until recently had been still in the ground and that their very existence not even known to the government of Mexico – was irrelevant. They were still stolen.

This was wholly different – in fact, completely the opposite – to what would have been the case if the Mexican patrimony law had been formulated as an export regulation rather than as a statute vesting title in the government. Then, the United States might well have refused to enforce it under the axiom that one sovereign does not enforce another sovereign's laws. Here, however, the United States was enforcing its own criminal law – the National Stolen Property Act which, under certain specified circumstances. makes it a federal crime to transport stolen goods in interstate commerce. Mexican law was merely being applied to determine the ownership of the goods in question in order to determine whether or not they were stolen.

Schultz had argued in the District Court that the 1983 Egyptian patrimony law functioned essentially as a "licensing and export" regulation rather than to vest title to antiquities in the Egyptian government. The District Court rejected that argument, and – on the appeal – so did the Court of Appeals. It found that the Egyptian law was "clear and unambiguous" and that "the antiquities that were the subject of the conspiracy . . . were owned by the Egyptian government." Schultz also argued that the McClain theory should not be applied in the Second Circuit for a variety of reasons – that there were countervailing precedents, that it violated United States national policy and that it had been effectively overruled by the Cultural Property Implementation Act (the CPIA) of 1983.

The Court of Appeals forcefully rejected all of those arguments as well. Of particular interest was its rejection of the third one – that the 1983 CPIA had somehow nullified (or was at least functionally related to) the McClain decisions of some five years earlier. In recent years, claims that there was such a connection had reached almost the truth-revealing level of folklore in the antiquities-dealing community. As the Court of Appeals noted, "[N]othing in the language of the CPIA supports that interpretation, and the legislative history of the CPIA shows that exactly the converse is true." The National Stolen Property Act is a criminal law. The CPIA is an import law. Although they may occasionally have some overlap, one does not cancel or modify the other.

In effect, the Second Circuit has now embraced the McClain theory and federal prosecutors may now resort to foreign patrimony statutes to determine what may or may not be stolen property for purposes of the National Stolen Property Act in the Second and Fifth Circuits. Because of a rarely-cited 1974 case – *United States v. Hollinshead* (495 F.2d 1154) – that's probably the situation in the Ninth Circuit as well. That covers fifteen states including the very large ones – important museum states all – of New York, Texas and California. Moreover, there's little reason to believe that the remaining Circuit Courts of Appeal would not – in appropriate circumstances – adopt the McClain theory as well. Museums and their staff should be on notice. Never before has it been so urgent that those who deal with patrimonial material truly understand both when and how that material was removed from its country of origin as well as the laws that may have been applicable to that removal. Willful ignorance is not an attractive alternative. Though it's true that the National Stolen Property Act only criminalizes trafficking in stolen goods if the trafficker knows those goods to have been stolen, it's also true – and this is exactly what happened in

"Never before has it been so urgent that those who deal with patrimonial material truly understand both when and how that material was removed from its country of origin as well as the laws that may have been applicable to that removal. Willful ignorance is not an attractive alternative."

Schultz – that a jury may just not believe the trafficker's claim that he or she was ignorant of that fact.

THE SHCHUKIN FAMILY'S SUIT AGAINST LACMA

As noted earlier, our final two cases involved efforts to use the American courts to resolve what are essentially foreign legal disputes. The first concerns twenty-five French paintings from the collection of Sergei Ivanovich Shchukin – the wealthy textile merchant who had amassed one of Russia's most important pre-Revolutionary collections of Impressionist and modern art and who is perhaps best remembered today as having been – together with Dr. Barnes – among Henri Matisse's greatest patrons. The Shchukin collection was nationalized by the Soviets in 1918. Ultimately, its holdings were divided between the State Pushkin Museum in Moscow and the Hermitage Museum in St. Petersburg. Although Shchukin himself – who emigrated to Paris where he died in 1936 – never made any effort to recover the collection, his heirs – without any success – have done so repeatedly since his death.

The most recent effort was by one Andre Marc Delocque-Fourcaud – Shchukin's grandson, a French citizen and, allegedly, the owner of a 9/16ths fractional share of the collection. It centered on a touring United States exhibition of seventy-six works borrowed from the State Pushkin Museum – twenty-five of them formerly in the Shchukin collection – that opened at the Museum of Fine Arts, Houston in December, 2002, went next to the High Museum in Atlanta, and then finally to the Los Angeles County Museum of Art (LACMA) where it opened in June 2003. As almost a routine condition of this loan, the State Pushkin Museum had required that the American museums included in this tour procure a federal immunity from seizure under 22 U.S.C. 2459. Acting on behalf of the three participating museums, the Museum of Fine Arts, Houston applied for such an immunity in July, 2002 and – following the required State Department finding that the exhibition would be "in the national interest" – received it several months thereafter.

Initially, Delocque-Fourcaud demanded a total of $600,000 – $200,000 from each of the three museums – as a fee for inclusion in the exhibition of the Shchukin paintings of which he claimed to be a part owner.[2] The museums refused to pay him anything. Then, in mid-July of last year – less than two weeks before the exhibition was scheduled to open on the West Coast – he filed a suit against LACMA in the federal District Court in Los Angeles. Among other things, he asked that the exhibition be enjoined – if not completely, then at least to the extent of the twenty-five paintings in which he claimed partial ownership; he asked that the State Department's grant of immunity from seizure be nullified; he asked that the court declare LACMA to be guilty of receiving stolen property; and he asked for money. Although no amount was initially specified, speculation included a portion of the admission proceeds as well as a percentage on all catalogue and other merchandise sales. What he most conspicuously did not ask for, however – clearly aware of the federal grant of immunity – was the seizure of the former Shchukin paintings.

The exhibition at LACMA – which was not enjoined – ran through October 13. Delocque-Fourcaud's lawsuit ran only a few weeks longer. Confronted with an extraordinarily compelling defense on LACMA's part, he turned tail and decided to withdraw. Pursuant to a stipulation in which the parties agreed that his claims against LACMA had been without any factual or legal merit, the District Court dismissed the case with prejudice on November 18. LACMA's defense had two prongs – each of which taken alone might probably have been sufficient to defeat the complaint. The first of these was based on the federal immunity statute. What LACMA – with help from the American Association of Museum– was able to show was that the language of this nearly forty-year-old statute could be interpreted in far richer ways than many people had ever previously imagined.

Notwithstanding that 22 U.S.C. 2459 carries the caption "Immunity from seizure under judicial pro-

[2] See article in *IFAR Journal*, Vol. 6, nos. 1 & 2.

"What LACMA was able to argue was that each of the forms of relief demanded by the plaintiff — although not amounting to an attempt at seizure — would nevertheless, in effect, diminish the Museum's custody and control over the borrowed objects in ways that the statute does not permit."

cess . . . ," the curious fact is that the word "seizure" never appears in the actual language of the statute. What the act prohibits, rather, is any judicial action that would have the purpose or effect of depriving a borrowing institution of "custody or control" over a borrowed object falling within its protection. While this would, of course, prohibit seizures, it could also prohibit a great deal more as well. What LACMA was able to argue was that each of the forms of relief demanded by the plaintiff – although not amounting to an attempt at seizure – would nevertheless, in effect, diminish the Museum's custody and control over the borrowed objects in ways that the statute does not permit. To take the most obvious example, the plaintiff's demand that the exhibition be enjoined, whether in whole or in part, would – if granted – prevent the Museum from carrying out what had been its primary purpose in borrowing these works of art in the first place – to display them to the public. What, asked LACMA, could possibly constitute a more glaring example of how acceding to the plaintiff's demand would, in effect, deprive it of control?

Further strengthening this first prong of LACMA's defense was the intervention of the United States Attorney. In addition to its prohibition of any judicial act that would deprive a borrower of custody or control, the immunity statute also provides that – in the event that anybody should attempt so to deprive a borrower of custody and control – the United States Attorney's office for the relevant judicial district may, as a matter of right, intervene as a party and seek to block that attempt. I'm not sure how often – if ever – this has been done. In the LACMA case, though, the Museum – working with the AAM – was able to con- vince the Justice Department that Delocque-Fourcaud's lawsuit, though not ostensibly about seizure, truly did involve the immunity statute and was an appropriate case for federal intervention. That, apparently, was more firepower than the plaintiff had originally bargained for.

The second prong of LACMA's defense involved a judicially crafted form of self-limitation that's come to be called "the Act of State doctrine." Writing for a unanimous Supreme Court in 1897 (*Underhill v. Hernandez*, 168 U.S. 250, 252), Chief Justice Melville Fuller provided a particularly succinct definition of this self-imposed limitation on the judiciary's power. "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory." Although the theoretical roots of this doctrine have been traced back to the courts of seventeenth-century England, it's had special resonance in the United States because of its relationship to still another fundamental – and, in this case, Constitutional – principle: the separation of powers. To the extent that the conduct of foreign relations is an activity that the Constitution reserves exclusively to the Executive and Legislative branches of the government, then to that same extent it ought be considered as beyond the authority and competence of the Judicial branch for it to insert itself into such relations.

Coming back to the LACMA case, was the Act of State doctrine fully applicable there? Could anything be made of the fact that the United States had not yet acknowledged the legitimacy of the new and revolutionary Soviet government at the time when Shchukin's collection was nationalized in 1918? The answer – counter-intuitive as it may seem – is "no."

Under the Act of State doctrine, the question of one government's recognition of another is relevant. The requirement, though, is that such recognition must exist at the time the pertinent legal action is brought. Whether recognition existed at the time when the act forming the basis of that action was committed – in this instance, the nationalization of Shchukin's collection in 1918 – is irrelevant.

In this instance, then, LACMA's defense was almost pure black-letter law. First, the nationalization of Shchukin's collection had been a governmental action. Compare that, for example, with many of the World War II cases where the offending acts had been committed by and/or on behalf of senior individuals within the Nazi hierarchy rather than by the German government itself. Second, at the time of its nationalization, the collection had been in Moscow – well within the territory of the Soviet Union. Again, compare that with the Nazi looting which primarily took place in France, Holland and Belgium. And third, the United States has continuously recognized the Soviet Union and its successor governments since 1933. Again, this was wholly different than in those cases of Nazi looting where restitution was ultimately ordered. It's unclear whether – and, if so, why – the plaintiff thought he could ever overcome this second prong of LACMA's defense. At one point, he reportedly told the press that the case was actually intended to be a "symbolic act of harassment."

"... Was the Act of State doctrine fully applicable there? Could anything be made of the fact that the United States had not yet acknowledged the legitimacy of the new and evolutionary Soviet government ...?"

THE MALEVICH CLAIM

The last of our cases also had its origins in Russia and in the turmoil that followed the 1917 revolution. It concerns a group of fourteen paintings by the constructivist artist Kasimir Malevich that the Stedelijk Museum in Amsterdam lent to a monographic exhibition on Malevich that was shown both at the Menil Collection in Houston and at the Solomon R. Guggenheim Museum in New York this past winter.[3] The fourteen works in question come from a larger group of 84 works by Malevich that the Stedelijk purportedly purchased in 1958.

Although Malevich and his highly abstract art had originally found support from the Russian revolutionary authorities, he gradually fell from favor as socialist realism became established as the officially preferred style of the U.S.S.R.. By 1927, following a major exhibition of his work in Berlin, he was so fearful that the work would be confiscated and/or destroyed if he tried to take it back to Russia that he left something over 100 works of art with friends in Germany intending to retrieve them at some later date. He was never able to do so and died destitute in St. Petersburg – then Leningrad – in 1935. In Germany, meanwhile, the rise of the Nazis from 1933 onward meant that Malevich's paintings – in the view of the Nazis, "degenerate art" – would be in jeopardy there as well. While some of the details are still not wholly clear, the works became scattered. In the end, fifteen of them wound up in the Museum of Modern Art in New York, some others went to the Busch-Reisinger Museum at Harvard and the largest portion by far – as noted earlier, some 84 – were ostensibly purchased by the Stedelijk.

Since the fall of the iron curtain, a group of Malevich's heirs – thirty-five altogether – have organized a campaign to recover the works that he left in Germany. A 1999 claim against the Museum of Modern Art was settled with the return of one painting – subsequently sold by the heirs at auction for some $17 million – and possibly (there are conflicting reports) by a substantial cash payment as well. A claim against the Busch-Reisinger was also settled. To date, however, the Stedelijk has taken the position that it was a good faith purchaser of the works in its collection, that the vendor from whom they were purchased had good title – the Malevich heirs vehemently dispute that fact – and that nothing is due to the heirs. The Stedelijk is also relying on something that seems akin to our own law of adverse possession, i.e., that after openly claiming ownership of these works for some thirty-five years, it's been vested with a prescriptive title to them since 1993, notwithstanding any infirmities that might have vitiated the 1958 sale. An earlier effort to settle this claim through negotiation broke down late in 2001. In January, only two days before the Malevich exhibi-

[3] See article in *IFAR Journal*, Vol. 6, no. 4.

"If American courts are to become the forum in which property disputes from all over the world are to be settled — disputes such as those in the LACMA and Malevich cases where there are virtually no American interests at stake — it can only be bad for those museums that seek to display to their publics objects borrowed from foreign collections."

tion closed at the Menil, the heirs filed suit against the City of Amsterdam – which owns the Stedelijk – in the federal District Court in Washington.

That the Malevich heirs did not sue earlier and try to seize the paintings themselves was in all likelihood due to the indemnity – the same federal indemnity that we saw in the LACMA case – by which they were covered while on exhibition. Of considerable interest, though – actually, of considerable concern – is that the presence of the fourteen Stedelijk paintings in the United States, notwithstanding their immunity from seizure, is still being claimed to constitute a "commercial activity" and to provide a jurisdictional basis for bringing this suit against the City of Amsterdam in a United States court. Underlying that claim is still another federal statute – the Foreign Sovereign Immunities Act, 28 U.S.C. 1605-1607 – which contains a number of exceptions to the general rule of sovereign immunity. One of these is a "commercial activity" test on which the Malevich heirs are counting.

"Should the Malevich heirs prevail on that 'commercial activity' point, it could well have a more than chilling effect on the willingness of foreign state-related entities to lend works of art to American museums."

Should the Malevich heirs prevail on that "commercial activity" point, it could well have a more than chilling effect on the willingness of foreign state-related entities to lend works of art to American museums. Certainly, it could well erode the sense of security that the federal immunity from seizure statute has hitherto provided. In fact, Thad Stauber, General Counsel of LACMA, reported that one scheduled loan to his museum has already been withdrawn as a result of this Malevich suit.

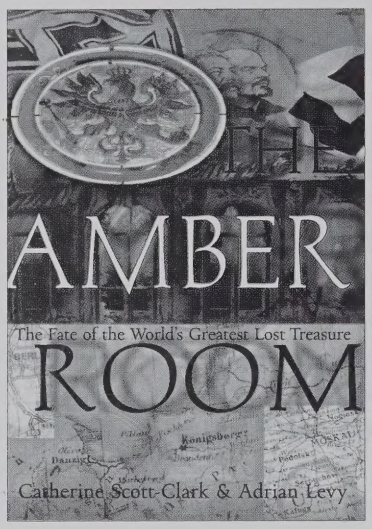
Although this suit against the Stedelijk is still at too early a stage to permit extended discussion, it does already suggest one point. If American courts are to become the forum in which property disputes from all over the world are to be settled – disputes such as those in the LACMA and Malevich cases where there are virtually no American interests at stake – it can only be bad for those museums that seek to display to their publics objects borrowed from foreign collections. Some argue that this melt-down of jurisdictional barriers may be the inevitable consequence of "globalization." Others think that the Supreme Court could derail the entire trend depending on what it does with the *Altmann* case (*Altmann v. Republic of Austria*).[4] In any event, though, these cases truly do, I think, merit close and ongoing attention.

[4] EDITOR'S NOTE: The Supreme Court's June 2004 decision in the Altmann case was narrowly worded and will not affect the trend discussed in Mr. Weil's article.

LOST IN TRANSLATION

KONSTANTIN AKINSHA*

What really happened to the Amber Room? Does a new book provide new answers?



Catherine Scott-Clark and Adrian Levy.
The Amber Room: The Fate of the World's Greatest Lost Treasure.
Walker & Company, New York, 2004.
Black and white illustrations, bibliography, index.
Hard cover. 386 pp.
List Price: $26.00 USD
ISBN 0-8027-1424-2

In 1996, a German commercial TV channel aired sensational news – the Amber Room, which had disappeared during WWII from Tsarskoe Selo – the Catherine Palace near St. Petersburg (formerly Leningrad) – had been found. On the TV screen, a shabby mustached man opened the doors of a garage – inside were stored the easily recognizable wall panels of the legendary room. I remember what I felt when I saw this footage. I was so shocked that I didn't even try to record the sensational documentary. Instead of switching on a VCR, I got on all fours and, my nose nearly touching the TV screen, tried to scrutinize the amber panels leaning against dusty garage walls. I couldn't believe my eyes – the room, which I had believed to be destroyed by fire in the Königsberg Castle in East Prussia, was sitting intact in some German garage.

It seems that I was not the only one whose interest was piqued by the astounding TV program. A few hours after it was aired, the German police ran an operation in the true style of Hollywood thrillers. On an autobahn south of Munich, police cars chased a van supposedly transporting the amber panels. The panels were in fact inside the van, but . . . they were made of plastic. They were manufactured for a scholarly documentary on the Amber Room, but were later obtained by a "Candid Camera" type of program, which played this convincing practical joke.

Even if the joke was not ethical, it was timely. After reunification, Germany lived through a wave of Amber Room mania. In 1990, Boris Yeltsin made his first state visit to the country. The Russian president announced that he had information about the location of the Amber Room. According to Yeltsin, it was

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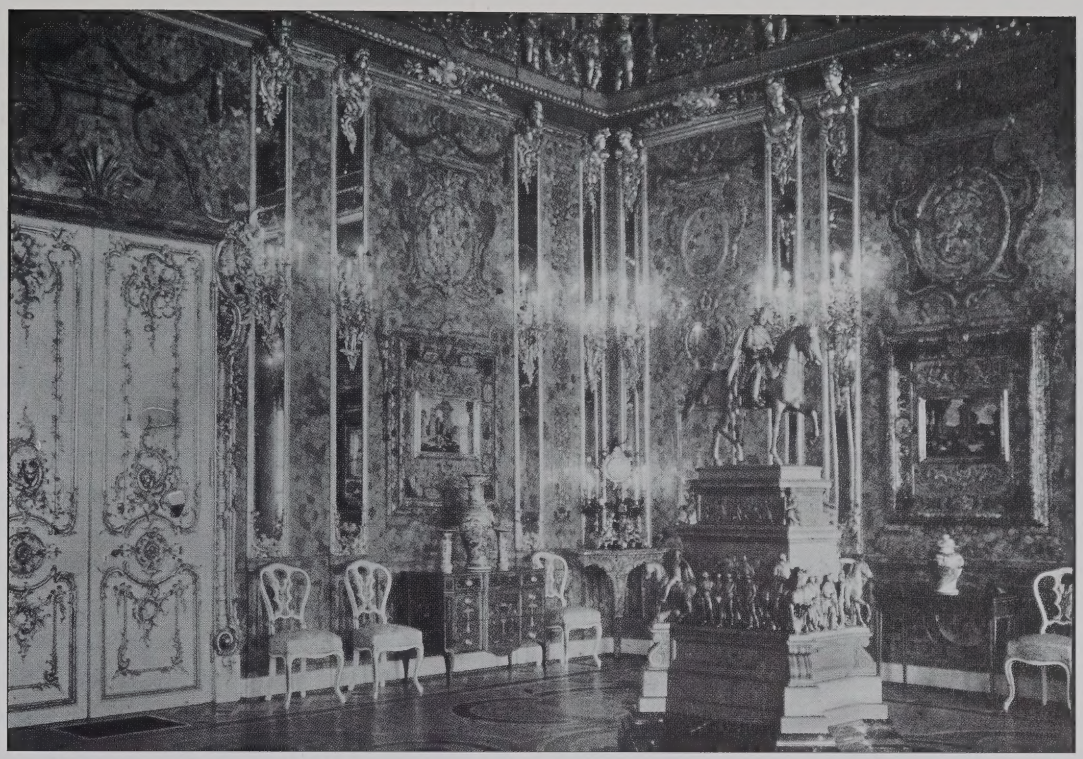

Partial view of the original Amber Chamber, Summer Palace, Tsarskoe Zelo near St. Petersburg, 1938, © Bildarchiv Preußischer Kulturbesitz.

hidden underground beneath the Soviet military base near Ohrdruf. The location of the Amber Room had been established by the GRU (Main Intelligence Department) – Russian military intelligence. Why the GRU had waited until the reunification of Germany to announce this sensational information remained unclear. Yeltsin's statement provoked immediate results – on weekends, hundreds of citizens from both parts of a reunited Germany rushed in their Trabants and Mercedes to the Ohrdruf hoping to unearth the hidden treasure. However, the room was not found. It could not be, because according to all available information, it had never left Königsberg. Last year, a replica of the Amber Room, produced with the financial support of the German company Ruhrgas AG, was unveiled during the celebration of the three-hundredth anniversary of the city of St. Petersburg. The very production of such a copy demonstrated that Russians had lost all hope of finding the missing treasure. However, numerous Amber Room aficionados are continuing their hunt in Germany and Russia, still trying to find the mysterious room in desolated mines and ruined bunkers.

THEFT AND FIRE

When Nazi armies crossed the Soviet border in June of 1941, the country was not ready for war. The hysterical, badly prepared evacuation of museum collections left behind numerous cultural treasures that fell into the hands of the occupiers. One of them was the legendary Amber Room, adorned on three walls with ornamented amber panels – some as large as four feet high – that were a gift to Peter the Great from the Prussian King Frederick William. Anatolii Kuchumov, a curator of the Tsarskoe Selo palace-museum who took an active part in the evacuation effort, recorded in his diary that an attempt to disassemble the room failed and that in the process a part of the amber decoration fell out of the mount and was destroyed. It was decided to conceal the room under false walls in the hope that the Germans would not find it. This was done, to no purpose. Nazi soldiers discovered the hidden treasure and pocketed parts of it as souvenirs. The official robbery followed this private one.

In stark contrast to the Soviet curators, the Nazi art experts demonstrated a striking efficiency – the fragile room was disassembled in just 36 hours and "evacuated" to Königsberg, the capital of East Prussia. On April 12, 1942, the room was unveiled in the Königsberg Castle. In October 1942, the German art magazine "Pantheon" published an article dedicated to the room–"The Great Prussian Cultural Monument," written by Alfred Rohde, the director of the Königsberg Castle Museum. The amber panels remained in the castle until the end of the war. Königsberg was destined to become the first major Germany city stormed by Soviet troops.

The chaos and horror of the first days of the Soviet occupation of East Prussia, the innumerable atrocities committed against the civilian population are well known and have been described in detail by both German and Russian authors. What, during those dark days, happened to the legendary room? According to Rohde, it remained in the castle, which had already been damaged by Anglo-American bombardment. Packed in crates and stored in the Order Hall (Ordersaal) of the castle, the Amber Room was there when the Soviet troops took control. Later, a fire started in the castle, and the hall was burned out. Immediately after the occupation of Königsberg, numerous "trophy brigades" were sent to the city. Dmitrii Ivanenko, a Moscow University professor who came to the defeated capital of East Prussia together with one such brigade, succeeded in finding in the smoldering ruins the accession book of the Castle Museum, which had a record about the delivery of the Amber Room. However, the book, which had survived the castle fire, didn't survive the chaos of the Soviet occupation and was lost. If only experts could have examined the records of this book, it could have positively changed the history of the search for the Amber Room.

POST-WAR INVESTIGATION

On June 12, 1945 a commission sent from Moscow, headed by Professor Alexander Brusov, the well-known Russian archeologist and official of the State Historic Museum in Moscow, came to the conclusion that the Amber Room had perished in the fire. Brusov had previous experience of contact with Germans. During WWI he had spent three years as a POW in Germany. His perfect knowledge of German was of great help during the search for the Amber Room. Brusov's commission excavated the ruins of the Ordersaal and interrogated Rohde, who stated that the crates containing the amber panels had been stored there. In the ruins of the hall, Brusov found the remains of the bronze molding of the palace doors from Tsarskoe Selo and some iron plates with screws, which according to Rohde had been used to attach the Amber Room panels to the walls of the packing crates. In addition to this evidence, Brusov had a witness – a Soviet colonel who stated that he saw the crates in the Ordersaal before the fire started. The disillusioned Brusov recorded in his diary, "The Amber Room has perished, apparently from the fire started by our soldiers."

"The disillusioned Brusov recorded in his diary, 'The Amber Room has perished, apparently from the fire started by our soldiers.' This could have been the end of the story, but it turned out to be just the beginning . . ."

This could have been the end of the story of the Amber Room, but it turned out to be just the beginning of its posthumous existence. Anatolii Kuchumov, the curator who took part in the evacuation of Tsarskoe Selo, didn't agree with the conclusions of the Brusov commission. In March of 1946, a new commission headed by Kuchumov was sent to Königsberg. One of Kuchumov's tasks was to pick up crates with different objects belonging to the Tsarskoe Selo museum, which had been found by Brusov. However, by the time Kuchumov got there, the crates had disappeared – they were looted by the Soviet military.

In the ruins of the Ordersaal, Kuchumov found the remains of three Florentine mosaics from the decora-

tion of the Amber Room, which Brusov's commission had overlooked. But there had originally been four mosaics. The curator from Tsarskoe Selo believed that the absence of the remains of the fourth mosaic and bronze scones in the burned out Königsberg Castle proved that the room had been removed from there before the fire started. If only he could have had the chance to see the accession book of the Castle Museum, Kuchumov would have learned that the mosaic and scones were never delivered to the Castle Museum – German soldiers had already stolen them in 1941, when the room was discovered in Tsarskoe Selo.

In an article titled "The Myth of the Amber Room" and published in the Russian art magazine *Artkhronika* in February 2003, Grigorii Kozlov wrote, "Kuchumov's enthusiasm found active support in the Ministry of State Security. By launching the search for the Amber Room, they could kill two birds with one stone: bury the unpatriotic version of its loss being due to those who had started the fire and the even more unpatriotic tale of the disappearance of the crates containing Brusov's finds. Thus, thanks to the ardent devotion of the Leningrader Kuchumov to his museum and to the cold calculation of the officers of state security, the 'mystery of the Amber Room' was born." Kozlov correctly noticed that the legend about the Amber Room hidden by the Nazis in some forgotten bunker turned into a myth comparable to stories about flying saucers or the Bermuda Triangle.

THE NEW BOOK AND ITS ALLEGATIONS

The new book by Catherine Scott-Clark and Adrian Levy, *The Amber Room: The Fate of the World's Greatest Lost Treasure* is an attempt to provide a definite answer about the fate of the famous artwork lost during WWII. The book has been advertised as a sensational discovery of new evidence that the room had been destroyed in Königsberg. Unfortunately, the authors, both British journalists, have hardly succeeded in finding any important documents shedding new light on the Amber Room story. Scott-Clark and Levy were the first researchers to investigate the personal documents of Anatolii Kuchumov, deposited after his death at the St. Petersburg branch of the Russian Archive of Literature and Art. While the documents provide numerous details previously unknown to the public, they hardly change the general picture. It was clear before the publication of the book that Anatolii Kuchumov initiated the still ongoing search for the Amber Room. The authors come to the conclusion that Kuchumov was also instrumental in the cover-up of the destruction of the Amber Room by Soviet soldiers and was almost a KGB agent. They paint an impressive picture of a state conspiracy to hide the real fate of the treasure. However, they do not provide any substantial evidence for such allegations.

Kuchumov's theory that the room had survived and was evacuated and hidden by the Nazis was based on two elements – his complete distrust of German witnesses (unlike Brusov, Kuchumov didn't speak German and had to rely on an interpreter) and the absence of the remains of the fourth mosaic and bronze scones in the ruins of the Ordersaal of the Königsberg Castle. He couldn't imagine that the fourth mosaic had been taken to Germany in a marauder's backpack. (The mosaic was later found and returned to Russia in 2000 in exchange for 101 drawings and prints taken to Russia from the Bremen Kunsthalle.) The curator's hypothesis that the Amber Room was either evacuated from Königsberg before the Soviet assault or hidden in some secret location in the city was undoubtedly useful to Soviet authorities. However, the accusation by the authors of *The Amber Room: The Fate of the World's Greatest Lost Treasure* that Kuchumov was connected to the secret police are not well grounded (if not slanderous).

"[Scott-Clark and Levy] paint an impressive picture of a state conspiracy to hide the real fate of the treasure. However, they do not provide any substantial evidence for such allegations."

" . . . We are grateful to the authors for the interesting new details they found in the curator's records. The problem is that [they] often don't interpret such details correctly."

Catherine Scott-Clark and Adrian Levy use in their text an impressive amount of Russian words (often misspelled), but they are remarkably ignorant of Soviet realities. They are, it would appear, completely dependent on their Russian research assistants. They willingly repeat different horror stories, appropriate for the comic strip "Tintin in the Land of the Bolsheviks" but not for a serious book. Trying to dramatize their research, Scott-Clark and Levy report about their trip to the Russian National Library as if it were an expedition to the GULAG: "One of the largest libraries in the world, it houses more than 32 million volumes. In Soviet times, the books' spines were turned away from the readers, its catalogue room planted in a maze of corridors, patrolled by the KGB." They don't explain how the librarians were supposed to find needed books in the face of such a peculiar placement on the shelves.

The British journalists do not demonstrate any awareness about the existence of special departments in all of the main Soviet libraries that housed "dangerous" books, access to which was severely restricted. Searching for Kuchumov, the authors ask their Russian helpers, "Is there such a thing as a Russian *Who's Who?*" and, upon getting a negative answer, try to locate Kuchumov and later Brusov (who was born in 1885!) by dialing the telephone numbers of their apartments or offices. It is true that a Russian *Who's Who* didn't exist during the Soviet days (now there are too many of them), however it should have sufficed to consult the Russian Museum Encyclopedia to save a lot of trouble and to find detailed information about both Kuchumov and Brusov. Incidentally, in the book, Brusov's patronymic is incorrect – he is not Ivanovich, but Iakovlevich. The brother of the famous Russian poet Valerii Brusov, Alexander started as poet and translator and later became an important archeologist. Information about this outstanding scholar is easily accessible in numerous academic publications.

The same criticism applies to Scott-Clark and Levy's "proof" of Kuchumov's collaboration with KGB. The evidence includes his party membership (the authors apparently don't know that practically every person in the USSR who wanted to make a decent career tried to, and often was obliged to, join the party), and his hurray-patriotic articles praising the Soviet soldiers who helped to protect cultural treasures, even if they belonged to the enemy, and who searched for the Amber Room in the ruins of Königsberg. (Did he have to describe how they were raping German women and looting everything that was possible to loot? There were much less painful ways to commit suicide during that time in the USSR.) Of course, Kuchumov wrote fairy tales. He wanted to attract attention to the fate of the lost treasure in order to receive official support for his search.

The authors of the book believe that Kuchumov's friendly correspondence with some G.S. Fors, whom they call the main KGB man in the Ministry of Culture, is conclusive evidence of the curator's collaboration with the secret police. However, the British journalists are not able to explain who this mysterious Fors actually was. The post of "the KGB chief in the Ministry of Culture" never existed. The mentioned personage could be the head, or an official of the Special Department of the Ministry, a secret KGB agent, or simply a retired KGB officer (many of them found retreat in the quiet offices of the Ministry.) Even if Mr. Fors was the head of the Special Department, his attempts to establish contact and to share information with a highly respected curator who had been for so many years involved in the search for the Amber Room look only logical. Haunted by stereotypes, the authors of the book believe that in the USSR (during the 1970s!) "most citizens lived in fear of the security services." Unfortunately, the population of the Soviet Union included not only nasty KGB thugs and heroic dissidents, but also an extra 255 million people, who

had a tendency "to approve the policy of the party and its leadership."

Scott-Clark and Levy are visibly concerned with being the first to discover unknown archival sources. They stress that they were the first researchers to examine Kuchumov's papers. This is true, and we are grateful to the authors for the interesting new details they found in the curator's records. The problem is that Scott-Clark and Levy often don't interpret such details correctly. Recounting the story of Kuchumov's interrogation of the German art historian Gerhard Strauss, the authors quote his statement that Rohde was not a Nazi, but a liberal, if not a left-winger. Strauss says, "His closest friends were Hans Hopp and my teacher R. Worringer." The journalists add, "Kuchumov noted the names Hopp and Worringer. They mean nothing to us." In fact, Strauss was talking about Hanns (not Hans!) Hopp, the German avant-garde architect who lived in Königsberg and became prominent in East Berlin after the war (his memoirs have recently been published), and Wilhelm Worringer, the famous art historian! If such people were truly the closest friends of Alfred Rohde, it is indeed difficult to imagine that he was a Nazi sympathizer.

Scott-Clark and Levy didn't read the complete version of Brusov's diary: according to them, his papers, kept in the Russian State Library in Moscow, are classified. I can't judge about the status of the papers today. In contemporary Russia, documents that were declassified during *perestroika* sometimes become secret again. However, the diaries are not only well known to researchers and quoted in dozens of books and publications on the Amber Room, but had even been shown in a documentary film made by Maurice Philip Remy for the German TV channel ARD.

GERMAN SECRET POLICE

A substantial part of the book is dedicated to the search for the Amber Room by the East German secret police, Stasi, and to the tragic story of Georg Stein, the West German strawberry farmer-turned weekend historian. Stein dedicated his life to the search for the mysterious room and finally, being ruined financially, committed suicide. However, while hunting for the elusive treasure, he found a real one – the treasures of the sacristy of Pskovo-Pcherskii monastery, which had been removed by the Nazis to Germany and were found after the war by American troops. Stein fought for return of the treasures to the Soviet Union. However, Soviet officials refused to compensate him for his expenses – one of the factors that lead to his suicide.

The discovery of the treasures from Pskovo-Pecherskii monastery, which had been left behind in Germany by the Americans, provoked numerous speculations that cultural property that had disappeared during WWII had been secretly removed to the USA – the Amber Room included. Scott-Clark and Levy describe Stasi involvement in the fabrication of falsified information that the Americans had secretly removed the Amber Room. But, this false rumor was not an exception. Practically at the same time, Dr. Klaus Goldmann conjured the hypothesis that the Schliemann gold (Priam's gold of Troy) had been sent to Fort Knox.

The grounds for all of these fantasies and falsifications was the common misunderstanding of the real provenance of the treasures from the Pskovo-Pecherskii monastery. Why didn't the Americans return them to the Soviet Union instead of secretly leaving them in the Landesmuseum in Wiesbaden? They had a good reason. Unfortunately Scott-Clark and Levy repeat a traditional mistake by stating that the treasures belonged to the monastery situated in the Russian city of Pskov. This is not true. Before 1939, the Pskovo-Pecherskii monastery was situated in the territory of Estonia and was not under the jurisdiction of the Moscow patriarchy. (The territory where the monastery is located was included in the borders of the Russian Federation only after the end of WWII.) American military authorities in Germany didn't return the cultural property of the Baltic States to the USSR because Washington never recognized the Soviet occupation of Estonia, Lithuania and Latvia as legal. Because of this, the monastery treasures were transferred into temporary German custody, as

"It is true that the Soviets didn't plan to advertise the fact that the room was destroyed in Königsberg by Soviet soldiers. However, a complicated cover-up operation continuing for nearly a half century is a highly unrealistic explanation . . .

was all other cultural property that was not restituted by OMGUS (The Office of the Military Governor U.S. in Germany) because of unclear provenance.

The story of the East-West German hunt for the Amber Room might be interesting for English-speaking readers. However, the German public is already well informed about it. Catherine Scott-Clark and Adrian Levy failed to mention in their bibliography the numerous important publications already dedicated to the fate of the Amber Room. Only last year, two serious volumes about the missing treasure were published in Germany. One of them was written by Guido Knopp, a well-known German historian,[1] another by Maurice Philip Remy, a respected journalist who spent many years researching possible versions of the treasure's disappearance.[2] Both books investigate the version concerning the destruction of the room in the Königsberg Castle and the subsequent Stasi involvement in the search for it.

The British journalists try hard to add the elements of a thriller to their book. They like to describe minor "atmospheric" details, demonstrating the keenness of their observations. The problem is that too often such details are wrong. Describing their interview with Baron Eduard von Falz-Fein in his villa in Vaduz, the authors mention that the baron had to fly to Kyiv to meet the prime minister of Ukraine – "We noticed the clock on the wall is set four hours ahead. To Ukrainian time." It should be no revelation that the time difference between Liechtenstein and Ukraine is one hour!

Unfortunately, the authors didn't ask the baron about his meetings with Anatolii Kuchumov. He would probably have told them the same story he told in his interview to Georgii Kozlov, made for Deutsche Welle in 1998. Kuchumov admitted to Falz-Fein that the quest of his life to find the Amber Room was a lost cause. The old curator understood too late that the possibility that the amber panels disappeared forever in the fire of the Königsberg Castle was the most realistic one.

COVER-UP (?)

The authors of the *The Amber Room. The Fate of the World's Greatest Lost Treasure* believe that Moscow employed all means to hide the truth about the Amber Room from the Allies. It is true that the Soviets didn't plan to advertise the fact that the room was destroyed in Königsberg by Soviet soldiers. However, a complicated cover-up operation continuing for nearly a half century is a highly unrealistic explanation of the Soviet activities. The disappearance of the Amber Room was useful, but the revelation of its destruction could have been useful too. After the end of the war, Soviet officials hoped that the Allied powers would adopt a conception of "restitution in kind," and that all destroyed cultural property – including architectural monuments – would be generously compensated from the repositories of the German museums. Unfortunately for the USSR, the discussion of the issue in the Control Council on Germany was blocked as a result of the Soviets' own behavior. The representatives of the USSR failed to provide both a list of their cultural losses and a list of museum objects already removed from the Soviet zone of occupation.

Also, it was probably not necessary to announce that Soviet soldiers had burned Königsberg Castle. Before

[1]Guido Knopp. *Das Bernsteinzimmer. Auf den Spuren eines Mythos (The Amber Room. On the Trail of a Mystery).* Hamburg: Hoffman und Campe Verlag, 2002.

[2]Maurice Philip Remy. *Mythos Bernsteinzimmer (The Mystery of the Amber Room).* Gebundene Ausgabe, 2003.

the storming of the city, it was heavily bombarded and half ruined by the Allied aviation. So Soviet officials could have easily accused "British and American imperialists" of the destruction of the czarist treasure. Kuchumov's version was useful; at the same time people (including high-ranking Soviet officials) wanted to believe in it. They want to believe in it even today. Hidden treasures are much more appealing than wanton destruction that happened as a result of chaos.

Catherine Scott-Clark and Adrian Levy's book, *The Amber Room: The Fate of the World's Greatest Lost Treasure*, contains an account of one known version of events that have been described by numerous authors. What is new is the flatness of their conclusions. As I have tried to show, Scott-Clark and Levy's suppositions are based on very thin ground. The book has been condemned by all possible Russian cultural officials: from Mikhail Shvidkoi, the head of the Cultural Agency in the Ministry of Culture, to Mikhail Piotrovskii, the director of the Hermitage. However, Russian criticism was based not on the actual text of the book, but on newspaper synopses of the "discovery" by the British journalists. More detailed reviews will appear in the Russian press soon. I am afraid that they will discuss not the wounded Russian pride but the credibility of the research. Regarding the international community of treasure hunters, Scott-Clark and Levy will not convince them that they are wasting time. One Amber Room aficionado has already written that *The Fate of the World's Greatest Lost Treasure* is no more than an attempt to distract attention from the real traces of the hidden treasure.

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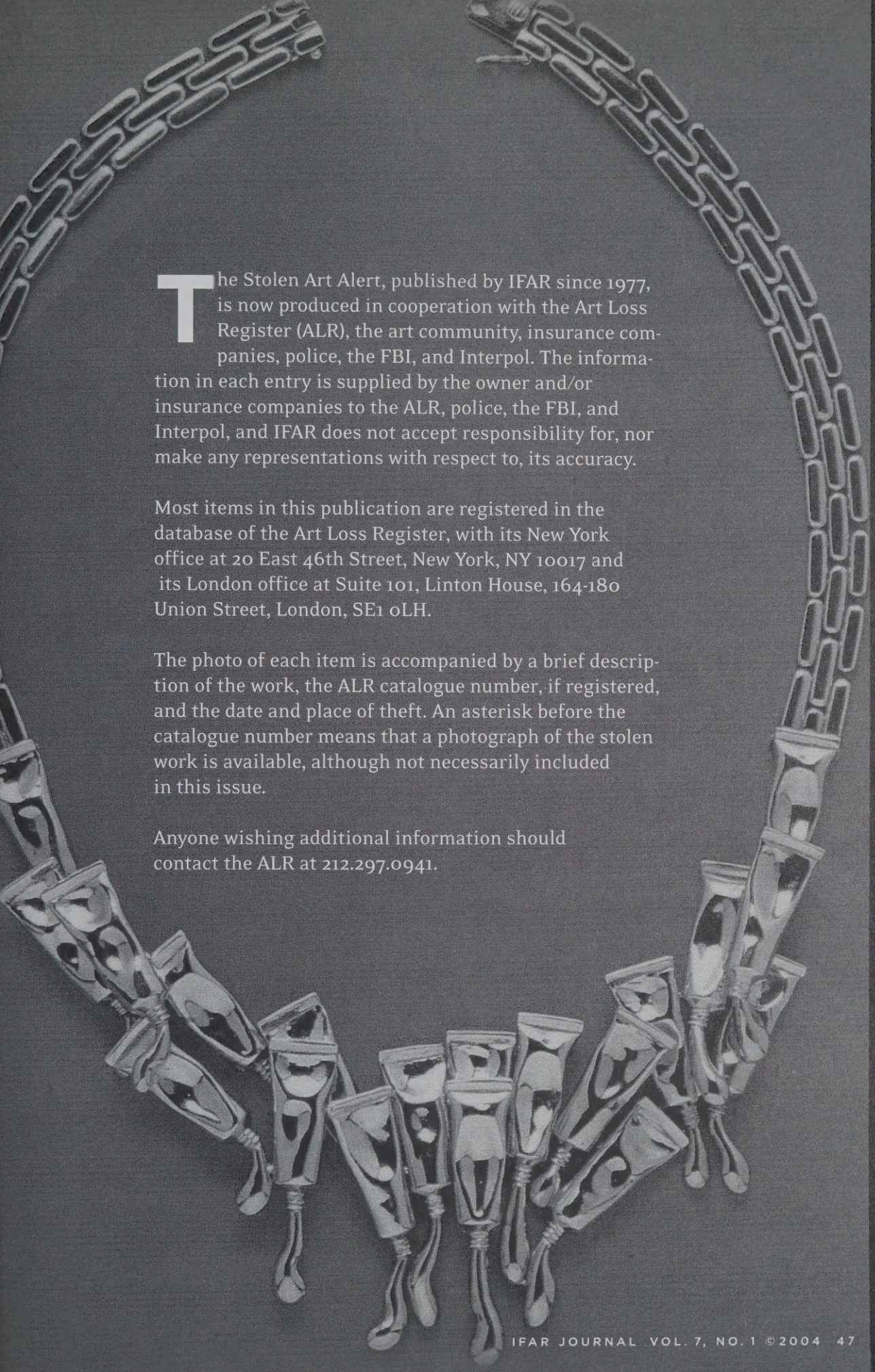

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Most items in this publication are registered in the database of the Art Loss Register, with its New York office at 20 East 46th Street, New York, NY 10017 and its London office at Suite 101, Linton House, 164-180 Union Street, London, SE1 0LH.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

Anyone wishing additional information should contact the ALR at 212.297.0941.

STOLEN ART*

PAINTINGS

1 PETER BRUEGHEL, THE YOUNGER (Flemish, 1564-1637/ 38). *A Farmer and Six Geese.* See color photo on inside back cover.

2 JEAN FERDINAND MONCHABLON (French, 1855-1904). *A Summer Landscape.* Oil on canvas. 19.25" x 31.75". Signed l/r. *N04.37. Stolen from a New York residence on December 22, 2003.

3 GEORGE EDWARDS PEACOCK (Australian, b.1806; d. after 1860). *Old Government House,* 1845. Oil on canvas. *L04.904. Stolen from the Museum of Sydney, Australia on March 19, 2004.

4 STUART DAVIS (American, 1894-1964). *Abstraction*, c.1915. See color photo on inside back cover.

5 ALEXANDRE-HYACINTHE DUNOUY (French, 1757-1841). *Classical Landscape with Drinking Horse.* Oil on canvas. 14" x 16". Signed l/r: AD. *N04.55. Stolen from a New York residence in either 2003 or early 2004.

6 THOMAS CLARKSON GORDON (American, 1841-1922). *Monitor and Virginia.* Oil on unbleached, sized sheeting. 79" x 160". *N04.72. Stolen from the Henry Ford Museum in Dearborn, MI (58.38.1.6/B.21546) on February 27, 2004.

7 JOHN OTTIS ADAMS (American, 1851-1927). *Hills and Seascape*, c.1914. Oil on canvas laid on Masonite. 37" x 29". *N04.75. Stolen from a hospital conference room in Indiana on December 22, 2003.

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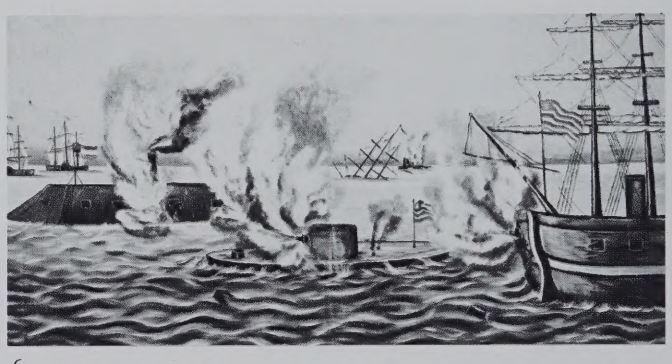

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* Numbering for the year 2004 Cumulative Index of Stolen Art begins with this issue.

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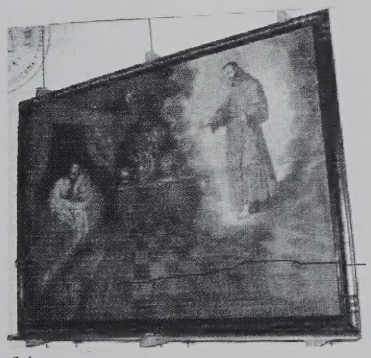

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8 ROSEBEE (American, b. 20th century). *Olde Country Christmas*, 2003. Acrylic on canvas. 16" x 24". Signed l/r: Rosebee. *N04.76. Stolen from a gallery in Massachusetts on February 14, 2004.

9 ALBERTO VARGAS (Peruvian, 1896-1982). *Vargas Girl* (for *Playboy*), 1960. 28" x 18". N04.67. Stolen from an art appraiser in California on December 7, 2003. No photo.

10 JULES LEFEBVRE (French, 1836-1911). *Salome.* Oil on canvas. 60" x 30". *N04.146. Stolen from a private residence in Florida.

11 JUAN GRIS (Spanish, 1887-1927). *Untitled.* See color photo on inside back cover.

12 *Coronation of the Virgin Mary* (17th century). Oil on linen. Stolen from the Chapel of the Neighbor in Tlaxcala, Tlaxcala, Mexico. Interpol no. 20040201911.

13 OLIVIER LEMAY (French, 1734-1797). *River Landscape.* Oil on panel. Descriptive label verso. *L04.01. Stolen from a gallery in London in December 2003.

The following painting was stolen by armed robbers who slit the throat of a security guard at the Museo de Arte Colonial, La Antigua Guatemala, Guatemala on May 2, 2004. Two sculptures, item nos. 43 and 44 below, were also taken:

14 CRISTOBAL VILLALPANDO (Mexican, 1645-1714). *The Dream of the Gregorian Pope.* Oil on canvas. 300 cm x 300 cm.

15 *Saint Andrew the Martyr* (18th century). Oil on canvas. 210 cm x 165 cm. Stolen from the Church of San Andres de Atuncolla, Department of Puno, Peru. Interpol no. 20040305022.

16 *XIII Station of the Cross*. Oil on cloth, 45 cm x 57 cm. Stolen along with XIV Station of the Cross from the Temple of Our Father Jesus in the State of Zacatecas, Mexico. Interpol no. 20040304024.

15

16

The following two paintings were stolen from a private residence in Sweden on May 30, 2004 along with item nos. 28 and 31 below. *Lo4.866:

17 JUAN GRIS (Spanish, 1887-1927). *Le Mandolin Sur La Table*, 1925. Oil on canvas. 45.5 x 55 cm.

18 FERNAND LÉGER (French, 1881-1955). *Nature morte bleu et rouge*, 1938. Oil on canvas. 64 x 44 cm.

17

18

The following two colonial paintings were stolen at the church of Calamarca of La Paz, Bolivia on November 9, 2003. Interpol no. 20031217844:

19 *The Coronation of the Virgin.* Oil on cloth. 110cm x 70 cm.

20 *Virgen de los Remedios.* Oil on cloth. 85 cm x 68 cm.

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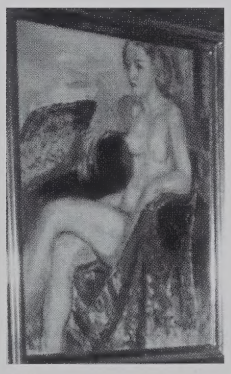

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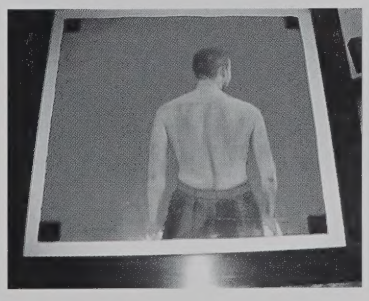


27

The following three paintings were lost in transit between Florida and New York. *No4.112:

21 Andrea Boscoli (Italian, 1560-1607). *Christ Preaching in the Temple.* Oil on panel. 5" x 10". Inscription verso: Pollajolo. Gal.Fesch.

22 Girolamo Brusaferro (Italian, 1700-1760). *Madonna Offering the Rosary to Saint Dominic in the Presence of Catherine of Siena.* Oil on canvas. 6" x 4 1/2".

23 Luca Longhi, attrib. to (Italian, 1507-1580). *Head of Monk.* Oil on panel. 8" x 7".

The following two paintings were stolen in Sweden. Interpol no. 20040405567:

24 Bruno Liljefors (Swedish, 1860-1939). *Fox with Fleeing Duck.* Oil on canvas.

25 Isak Grunewald (Swedish). *Seated Woman.* Oil on canvas.

WORKS ON PAPER

26 *Bacchus and Ariadne*, 1845. Gouache and black chalk on paper. *No4.127. Stolen from a private residence in New York.

27 Salomon Huerta (Mexican, b.20th century). *In Memory Of*, 1995. Oil on paper. 25"x 26". Framed under glass by the artist. *No4.70. Stolen from a framing shop in California on August 15, 2003.

28 ANDERS ZORN (Swedish, 1860-1920). *Josefina and Ida Rudbeck at Edsberg*, 1881. Watercolor. 30.5 x 41 cm. Signed: L. Zorn. *L04.866. Stolen from a home in Sweden on May 30, 2004, along with item nos. 17, 18, and 31.

28

PRINTS, LITHOGRAPHS, ETCHINGS

The following two etchings by REMBRANDT VAN RIJN (Dutch, 1606-1669) were stolen from a school in New Hampshire between January 2001 and December 2003. *N04.56:

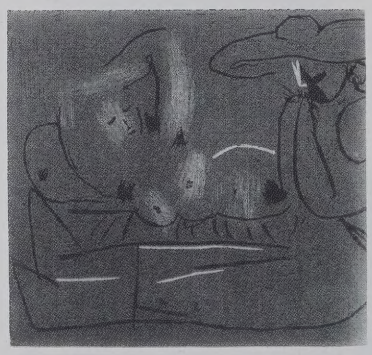
29 *Self-Portrait in a Velvet Cap with Plume*, 1638. Black ink on paper. Signed u/r in plate: Rembrandt/ 1638. 5 3/8" x 4". No photo.

29

30 *Descent from the Cross by Torchlight*, 1654. Black ink on paper. $8\frac{1}{4}$" x $6\frac{1}{2}$". Signed on plate: Rembrandt f. 1654.

30

31 PABLO PICASSO (Spanish, 1881-1973). *Femme Couchée et Homme au Grand Chapeau.* Linoleum block print on paper. 53 x 64 cm.Numbered 14/50. *L04.866. Stolen from a home in Sweden on May 30, 2004 along with item nos. 17, 18, and 28.



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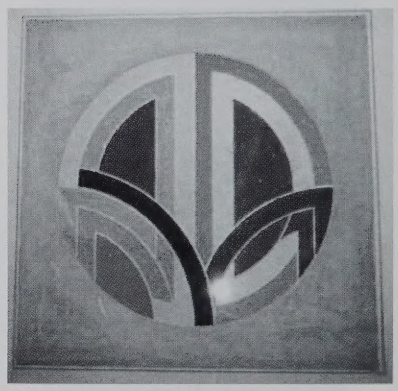
32 FRANK STELLA (American, b.1936). *Sinjerli variations squared with color ground 1A*, 1981. Lithograph 32" x 32". *N04.81. Lost in transit around December 8, 2003.



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SCULPTURE

The following two bronze sculptures were stolen from an art gallery in Oklahoma on December 15, 2003. *No4.40:

33 Joe Beeler (American, b.1931). *The Elder*, c.1980. #10 of an edition of 30.

34 Orland Joe (Native American, b.20th century). *Head of a Man.* No photo.

---

35 Louis Barrias (French, 1841-1905). *Nature Unveiling Herself Before Science*, c.1920. Gilt and silvered bronze and ivory on marble base. Ht.: 23.5". *No4.51. Stolen from a Los Angeles gallery on January 26, 2004.

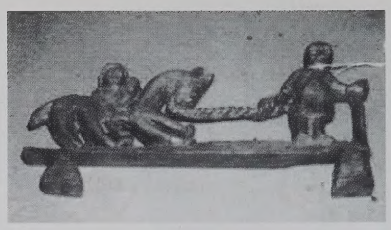
36 Fernando Botero (Colombian, b.1932). *Meditation. Bronze*, approx. 8" x 7" x 4". Wt: 12-15 lbs. *No4.61. Stolen from a Massachusetts gallery on February 20, 2004.

37 Claire-Jeanne-Robert Colinet (Belgian/French, 1882-1940). *Ankara Dancer* (or *Snake Dancer*), c.1920. Bronze, ivory, and marble. Ht.: 23". *No4.52. Stolen from a private California residence on January 22, 2004.

38 Corinne Whitaker, aka the Digital Giraffe (American, b.20th century). *My Other Self*, c.2000. Stainless steel on black marble base. 13" x 10" x 6". *No4.91. Stolen from a San Francisco gallery on March 21, 2004.

39 Mihail Chemiakin (Russian, b.1943). *Carnival at St. Petersburg*, c.1998. Bronze. 26" x 12" x 12". *No4.64. Stolen from a New York gallery on October 22, 2003. No photo.

40 CELSO GALLEGOS (b. 20th century). *Flight into Egypt.* Wood. *N04.104. Stolen from a museum in Santa Fe, NM.



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41 *Saint Barbara* (16th century). Ht: 100 cm. W: 80 cm. Missing fingers on both hands. Stolen in Slovenia. Interpol no. 20040405262.

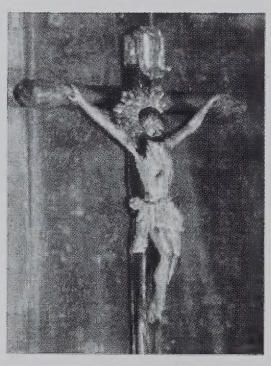
41

42 *Saint Peter.* Polychrome wood. Stolen from a church in Slovenia in September 2003. Interpol no. 20031015369.

42

The following two sculptures were stolen from the Museo de Arte Colonial, La Antigua Guatemala, Guatemala on May 2, 2004 along with painting no. 14 above:

43 *Crucifix* (Spanish, 18th century). Polychrome wood. 78 cm x 37 cm.



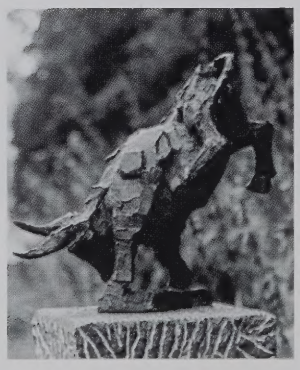
43

44 *Virgin of Sorrows* (Spanish, 18th century). Wood with metallic paint. Ht: 38 cm. W: 20 cm.

44

The following two bronze sculptures by JITS BAKKER (Dutch, b.1937) were stolen from the Stichtung Museum Beelden op Beershotenpark in The Netherlands on October 30, 2003. *L04.909:

45 *Bull.* Ht: 50 cm.



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46 *Cyclists.* Length: 180 cm.

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51

The following three sculptures by Salvador Dalí (Spanish, 1904–1989) were stolen from a private residence in Maryland in 2004. *No4.65:

47 *Menorah Dalinienne*, c.1981. Gilded bronze. 51 cm x 31 cm. No. 6/250. Approx Wt: 28 lbs.

48 *Elephant Spatial*, c.1980. Bronze with blue patina. Ht: 94 cm. No. 328/350.

49 *Woman Aflame*, c.1980. Bronze. Ht: 84 cm. No. 294/350.

PHOTOGRAPHS

50 JOEL STERNFELD (American, b.1944). *New York City, June 1976 (Chelsea).* Digital C print, c.2003, from a c.1976 negative. 14 1/8" x 18 1/2" framed. Signed recto center: Joel Sternfeld 1/8. *No4.53. Stolen from a gallery in New York City in January 2004.

ASIAN ART

51 10TH KARMAPA,attrib. to (Tibetan, 17th century). *Seated Padmipani.* Ivory miniature with traces of red pigment. 8" x 6" x 3". *No4.43. Stolen from a gallery in Washington, DC in February 2004.

NATIVE AMERICAN ART

The following items were among 110 ethnographic materials (of which 27 have been recovered) and 373 archaeological artifacts stolen between 1995 and 1999 from the collections of the Wisconsin Historical Museum, Madison by its curator, who later pled guilty. He was sentenced to 15 years of prison and 30 years of probation:

52 *Cheyenne Eagle Feather, Ermine Tail Headdress.* See color photo on inside back cover.

53 *Cheyenne Eagle Feather Headdress.* Classic bonnet made with the tail feathers of the golden eagle, with a beaded browband of stepped triangles against a white background, red wool cloth.

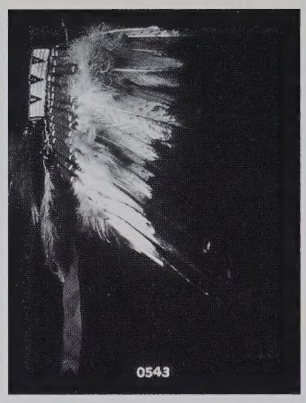
54 *Catlinite Pipe* (shown upper right). Lead inlays. Ht: $3\frac{1}{2}$"; L: $6\frac{1}{2}$"; from Craw Creek, Dakota.

55 *Potowatomi Bear Claw Necklace* (shown around neck of male mannequin). Made of bear claws, green glass beads, and brass beads, with a small, tubular beaded pendant. *Scalp lock* (19th century). NAGPRA eligible; Ho-Chunk Nation affiliation.

56 *Scalplock* (19th century). NAGPRA eligible; Ho-Chunk Nation affiliation.

57 *Crow Shirt.* c.1880. Man's shirt of red blanket cloth with selvage along the bottom. With pink, blue, yellow, green and white beadwork strips down the sleeves and across the shoulders; buckskin fringe along the shoulders and down the sleeves.

58 *Ho-Chunk Beaded Neck Band.* L: 15".



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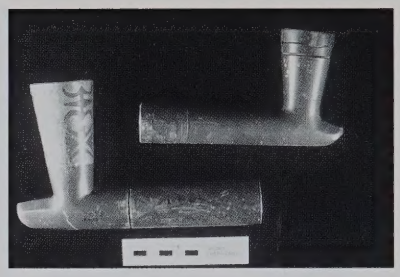
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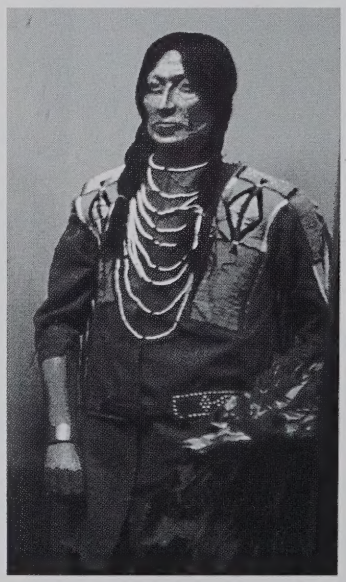
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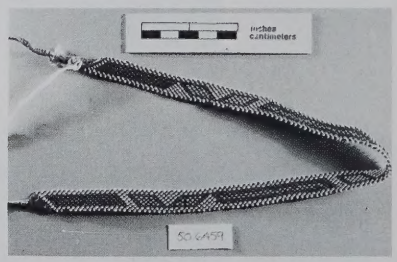
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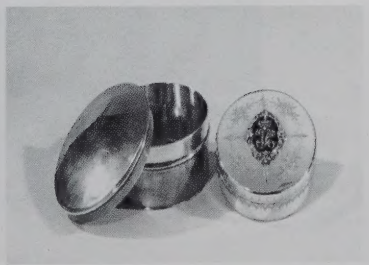


63

DECORATIVE ARTS

Ceramics, Pottery, Porcelain

The following five porcelain statuettes were stolen in Slovenia. Interpol no. 20031217282:

59 *Lady.* Ht: 19 cm. and *Cavalier with Bouquet.* Ht.: 20 cm. (both early 19th century). Labeled with the temporary inventory nos. NMS 55 and NMS 44 respectively. Grazed at the bottoms: "A" and "56" and "A" and "36" respectively; embossed with "121" and "58" respectively. Inventory numbers of the National Museum of Slovenia on the bottoms: N10087 and N10086, respectively.

60 *Gamblers*, c.1860. Ht: 14.2 cm. Inkpot. On the bottom: inventory no. N 10105 of the National Museum of Slovenia.

61 *Seated Man.* Ht: 12.8 cm. and *Seated Woman.* Ht: 13.3 cm. (both mid-19th century). Labeled on the bottoms: Casa di venditi autorizzata Milano, Corso Emanuele 8, with no. 4313 written in the center in red crossed by a blue line. Inventory numbers of the National Museum of Slovenia on the bottoms: N 10085 and N10084 respectively.

SILVER

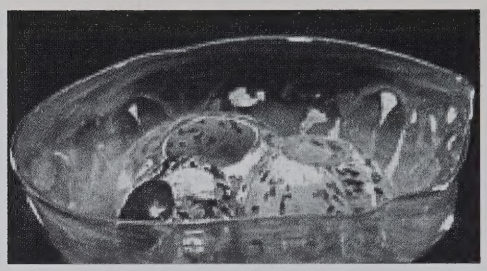
The following items were stolen from the Museum Amstelkring in Amsterdam, The Netherlands in May 2004:

62 *Ceremonial sceptre*, c.1885, with image of Willibrordus

63 *Medicine boxes*, c.1783.

GLASS

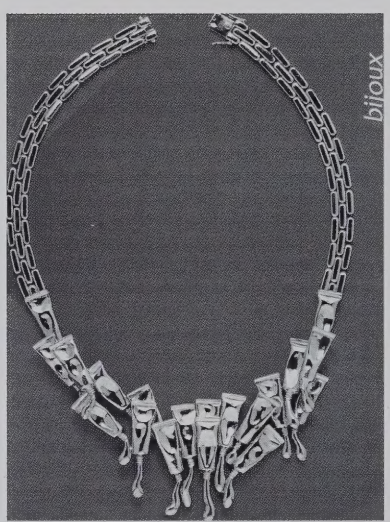
64 DALE CHIHULY (American,). *Moccasin Brown Desert Basket Set with Turquoise Blue Lip Wrap.* *N04.120. Stolen from the Mockingbird Art Gallery in Bend, OR April 12, 2004.



64

JEWELRY

65 ARMAN (French, b.1928). *Necklace of Squeezed Paint Tubes. Gold.* 2" x 18" x 1/4". No. 4 in an edition of 4. *N04.90. Stolen from a New York gallery on March 11, 2004.



65

The following items once owned by Elvis Presley were stolen from the Elvis-A-Rama museum in Las Vegas, NV on March 14, 2004.*N04.92.:

66 *"EAP" ID Bracelet*, c.1971. 14kt gold mesh bracelet with 5 double-linked strands and the initials "E.A.P." engraved in the center.

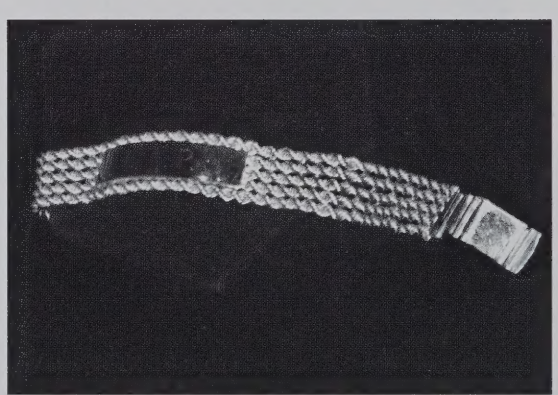
67 *Star Ruby Diamond Ring*, c.1975. 14kt gold ring with 41ct Star Ruby surrounded by diamonds totaling 3.5 cts. Not illustrated.

68 *"Elvis" Gold and Diamond Medallion*, c.1973. Round gold medallion with black onyx that spells "Elvis" in diamonds. Not illustrated.

69 *"EP" Diamond Pendant and Chain*, c.1975. 18kt gold medallion stamped with initials "E.P." with a 0.30 ct diamond after each initial. Not illustrated.

70 *Initial "E" Humes High School Ring*, c.1953. 10 kt gold. Not illustrated.

71 *Louisiana Hayride "E. Presley Day" Ring.* 18kt gold and black onyx ring inscribed "LH-55." Not illustrated.



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72 *Hamilton Wristwatch*, c.1955. 14kt yellow gold filled casing with a rectangular face, matched with a black suede band and gold buckle. Not illustrated.

73 *Memphis Police Shield Ring*, c.1957. Black onyx. Not illustrated.

74 *Las Vegas Hilton Logo Scarf*, c.1975. White with a blue facsimile signature, "Elvis Presley." Not illustrated.

LITURGICAL ITEMS

The following two items were stolen from the Czech Republic. Interpol no. 20040100092:

75 *Chalice* (French, 18th century). Gilded silver and brass. Ht: 25 cm.

76 *Monstrance of St. Cross*, c.1760. Gilded silver and brass with rock crystal. Ht: 26.6 cm.

---

77 *Crown of Mother of God*, gold alloy with three rock crystals. Ht: 22 cm. W: 27 cm. Wt: 298.5 g and *Crown of the Child*, gold alloy with one quartz stone. Ht: 13.5 cm. W: 15 cm. Wt: 112.6 g. Stolen from a religious icon in Lithuania. The photo shows the icon with two crowns *in situ*. Interpol no. 20031218406.

MISSING ART**

PAINTINGS

1 PABLO PICASSO (Spanish, 1881-1973). *Nature morte à la charlotte.* See color photo on inside back cover.

2 CHARLES EMMANUEL JOSEPH ROUSSEL (French, 19th century). *Scene of Maritime Life.* Oil on canvas. 24" x 42 3/4". Signed l/r; dated 1908. *N04.54. Discovered missing from a Boston gallery on December 31, 2003.

2

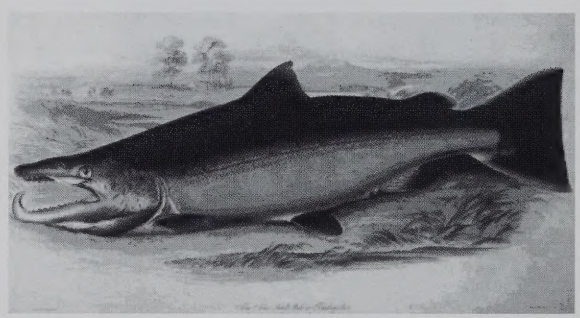
3 ERNEST CHARTON (French, 1816-1877). *Camino de Valparaiso a Santiago*, 1867. Oil on canvas. 27 1/2" x 44". N04.94. Missing from a private collection in New York. No photo.

4 ANDY WARHOL (American). *Toy Motorcycle.* Silkscreen and acrylic on canvas. 8" x 10". Unsigned with estate stamp verso with catalogue #PA20.004. *N04.118. Missing from the inventory of a gallery in California.

4

5 MAURICE UTRILLO (French, 1883-1955). *La Rue de l'Abrevoire*, 1915. Oil on paper on canvas. 44 x 55 cm. *N04.103. Missing from a New York residence.

5



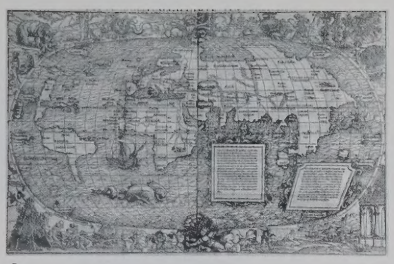
6

WORKS ON PAPER

6 SIR WILLIAM JARDINE (Scottish, 1800-74). *British Salmonidae*, c.1839-41. *N04.38. Stolen from a private collection in Texas between May and September 1999 along with the maps (items 7–13) listed here and on next page.

7

** Numbering for the year 2004 Cumulative Index of Missing Art begins with this issue.



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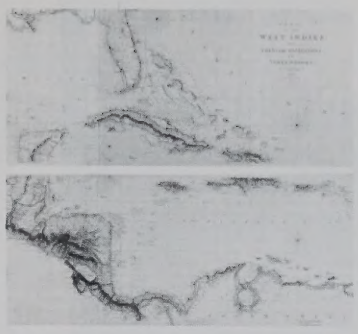

10

MAPS

7 *Henry Popple's Map of the British Empire in America*, 1733. With the French and Spanish settlements adjacent. First edition, full color engraving. Imprint l/r mentioning the engraver, William Toms.

8 DAY & HAGHE, *A New Map of Texas*, 1841. Lithograph with hand coloring; some ageing. 16¾" x 15¼". No photo.

9 HANS HOLBEIN AND SEBASTIAN MUSTER (cartographer and artist), *Typus Cosmographicus Universalis*, map of the world, 16th century. 16" x 22½".

10 AARON ARROWSMITH, *A Chart of the West Indies and Spanish Dominions in America*, 1803. Wall map in two sections, each 25" x 75". Engraving with color outline.

Set of four maps by WILLIAM JANSZOON BLAEU, c.1640. Each measures 38" x 47" and is outlined in color:

11 *Nova et Acurata totius Europae Tabula.*

12 *Nova et Acurata totius Americae Tabula.*

13 *Nova et Acurata totius Africae.*

14 *Nova et Acurata totius Asiae Tabula.*

11

12

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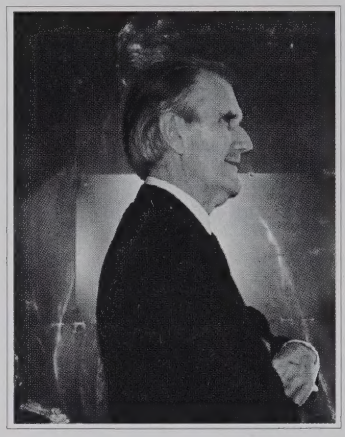
14

In Memoriam

HUBERT VON SONNENBURG



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PETER MACGILL — PRESIDENT, PACE/MACGILL GALLERY
STEVEN MANFORD — DIRECTOR, MAN RAY RAYOGRAPHS CATALOGUE RAISONNÉ PROJECT
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PETER STERN, ESQ. — OF COUNSEL, MCLAUGHLIN & STERN, LLP
KATE WARE — CURATOR OF PHOTOGRAPHY, PHILADELPHIA MUSEUM OF ART

TOPICS INCLUDE:
Concepts of vintage and originality; the changing marketplace;
Lawsuits involving Lewis Hine and Man Ray photos;
Forensics: Photograph papers, dating, etc.

1

4

11

52

15

STOLEN ART

1 PETER BREUGHEL, THE YOUNGER (Flemish, 1564-1637/68). *A Farmer and Six Geese.* Oil on circular panel. Diam: 17 cm. *L04.902. Stolen in The Netherlands on April 18, 2004. *AXA Art is offering a Reward of 30,000 euros.*

4 STUART DAVIS (American, 1894-1964). *Abstraction,* c.1915. Oil on board. 10½" x 8⅜". *N04.110. Stolen from Owings-Dewey Fine Art, Santa Fe, NM, between 4 PM, March 23 and 10:30 AM, March 24, 2004.

11 JUAN GRIS (Spanish, 1887-1927). *Untitled.* Oil on canvas. 26" x 19½". Signed and dated October 1926. *N04.132. Stolen from a private residence in Missouri.

52 *Cheyenne Eagle Feather, Ermine Tail Headdress.* Classic bonnet made with the tail feathers of the golden eagle, with ermine skin fringe, dyed horsehair, and beaded browband with a blue background. Stolen from the Wisconsin Historical Society, Madison along with items 52-58, this issue.

MISSING ART

15 PABLO PICASSO (Spanish, 1881-1973). *Nature morte à la charlotte,* *L04.906. Reported missing from a workshop belonging to the Pompidou Centre, Paris on May 14, 2004. The work was last seen on January 12, 2004.

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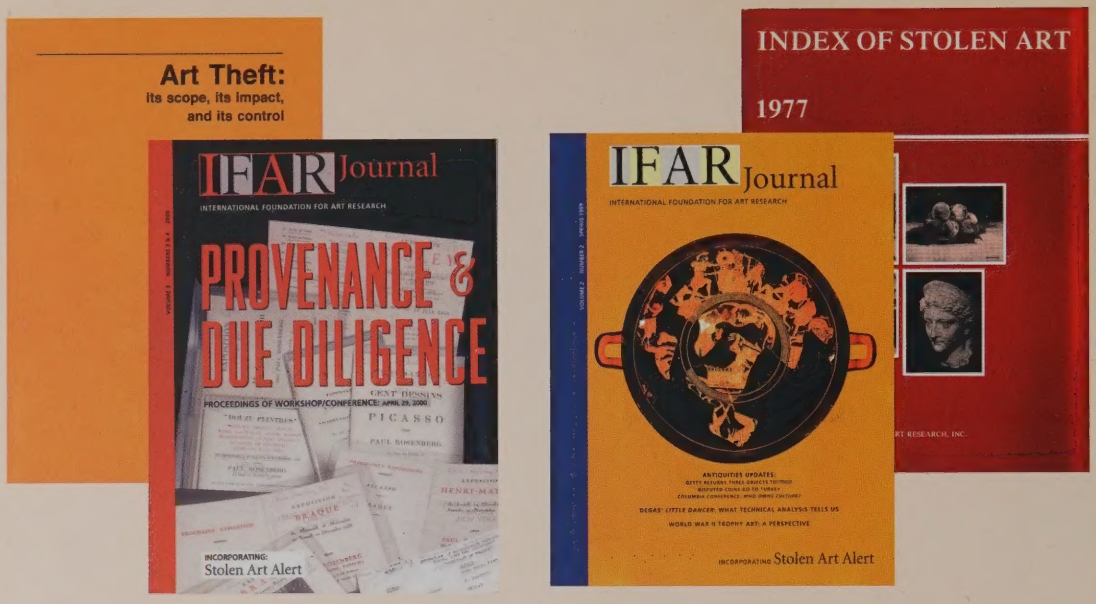

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